

NATIONAL MOVEMENT AND CONSTITUTIONAL DEVELOPMENT OF INDIA

By

RAMA NAND AGGARWALA

M.A., LL.B.

*Head of the
Political Science Department,
Ramjas College, Delhi.
Formerly of Meerut College, Meerut.*

SECOND (REVISED) EDITION

METROPOLITAN BOOK CO. (PRIVATE) LTD.

BOOKSELLERS AND PUBLISHERS

1, FAIZ BAZAR, DELHI.

Published by :
Shri B. V. Gupta for Metropolitan Book Co. (Private) Ltd.
1, Faiz Bazar, Delhi.

372.

*All rights including that of the plan of the book,
names and sequence of parts and chapters
reserved to the author.*

A. 1. 3
342.

Printed by :
Bal Krishna, M. A., at the Yugantar Press, Dufferin Bridge, Mori Gate, Delhi.

PREFACE TO THE SECOND EDITION

Since the publication of the first edition of this book in July, 1956, many developments of far-reaching significance have taken place in the political life of India, *e. g.*, the re-organisation of the territorial boundaries of the States with effect from the 1st of November, 1956, the second general elections held in 1957, the formation of the Ministry by the Communist Party in Kerala and the subsequent dismissal of the Ministry by the President under the emergency provisions in 1959, the birth of Swatantra Party and the present estrangement in Indo-Chinese relations on the occupation of a part of Indian territory by China. The territorial re-organisation also brought about many changes in the composition of the Parliament and the State Legislatures. All these developments and changes have been incorporated in the present edition.

Ramjas College Flats,
University Enclave,
Delhi-6.
3, November, 1959.

R. N. AGGARWALA

CONTENTS

PART I

DESPOTISM AND THE RUDE SHOCK

	PAGE
CHAPTER I—Introduction.	1- 6
✓ Impact of National Movement on Constitutional Development ...	1- 2
Evolutionary nature of Constitutional Development ...	2
2m The White Man's Burden Theory ...	2- 3
Divide and Rule Policy ...	3- 4
An ominous aspect of the British Rule ...	4- 5
The Method of Non-violent Civil Disobedience ...	5- 6
Lesson from Indian history ...	6
CHAPTER II—Constitutional Development till 1857 ...	7- 22
The coming and success of the British ...	7- 9
The grant of Diwani Rights ...	9
Double Government in Bengal ; evils of the system ...	9- 11
✓ Regulating Act, 1773 ; causes ; main provisions ; importance ; defects ...	11- 15
Bengal Judicature Act, 1781 ...	15
✓ Pitt's Indian Act, 1784, main provisions ; evaluation ...	15- 17
✓ Charter Act of 1793 ...	17
✓ Charter Act of 1813 ; main provisions ...	17- 18
✓ Charter Act of 1833 ; main provisions ; evaluation ...	18- 20
✓ Charter Act of 1853 ; main provisions ; evaluation ...	20- 22
CHAPTER III—Rude Shock and taking over by the Crown ...	23- 28
✓ Mutiny ; political consequences ...	23- 24
✓ The Act of 1858 ; causes ; main provisions ...	24- 26
Need for India Council ; status ; defects ...	26- 27
Evaluation of the Act of 1858 ...	27- 28
Queen Victoria's Proclamation of 1858 ...	28

PART II

BENEVOLENT DESPOTISM AND THE NATIONAL DEMAND

CHAPTER IV—The Policy of Association ...	29- 32
✓ Indian Councils Act, 1861 ; causes ; main provisions ; evaluation	

	PAGE
CHAPTER V—Birth and early phase of National Movement ...	33- 48
Indian Nationalism and its aim ...	33- 34
Causes of the growth of Indian National Movement	34- 39
Birth of the Indian National Congress ; its national character ; first session ...	39- 41
Some aspects of the early Congress ; change in the attitude of the Government ...	41- 42
Administrative Reforms demanded by the Congress from 1885 to 1905 ...	42- 43
Principles of the early Moderates ; their work and weaknesses ...	43- 45
CHAPTER VI—Indian Councils Act, 1892 ...	46- 48
The Act ; causes ; provisions ; appraisal	
CHAPTER VII—Extremist Movement ...	49- 58
Causes of the growth of the Extremist Movement ...	49- 53
Birth of the Extremist Party ...	53- 54
Surat Split ...	54- 55
Stern repression and eclipse of the Extremists ...	55- 56
Different Groups among the Extremists ...	56- 57
Principles of the Extremists ...	57- 58
Effects of Extremist Movement on national struggle	58
CHAPTER VIII—Rise of Muslim Communalism in India 59- 63	
Wahabi Movement ; work of Sir Syed ; policy of divide and rule ; Muslim Deputation of 1906 and separate electorates ; part played by Lord Minto and British bureaucracy	
CHAPTER IX—Morley-Minto Reforms ...	64- 68
Indian Councils Act, 1909 ; causes ; official view of Reforms ; main provisions of the Act ; shortcomings of the Reforms ; utility of the Reforms	
CHAPTER X—World War I and Montagu's Declaration 69- 83	
Failure of 1909 Reforms ...	69
Lord Hardinge and his progressive policy ...	69- 70
War intensified nationalism ...	71
Congress-League Pact, 1916 ; causes for change in League policy ; Congress response ; provisions of the Pact ; how far Congress justified in accepting communal provisions ; why the Government rejected constitutional provisions ...	71- 75
Extremists join the Congress again ...	75
Home Rule Movement ...	75- 77
Messopotamian Muddle ...	77- 78

	PAGE
Causes which led to Declaration of 1917 ; the Declaration ; comments	78- 80
✓ Material on which Montford Reforms were based ; Seed of Dyarchy	80- 81
✓ Montagu-Chelmsford Report	81- 83

PART III

PARTIAL RESPONSIBILITY AND INDIA INSISTENT

Government of India Act, 1919	84-128
CHAPTER XI—Main features and Home Government ...	84- 93
Preamble	84- 85
Main features	85- 87
✓ Home Government : Secretary of State for India ; powers ; relation between the Secretary of State and Governor-General	87- 90
India Council ; subsequent changes ; Criticism ...	90- 92
High Commissioner for India	92- 93
CHAPTER XII—Responsive Autocracy at the Centre ...	94-106
Governor-General of India ; appointment and tenure ; powers	94- 97
Executive Council	97-100
Legislative Assembly	100-103
Council of State	103-105
Influence of the Central Legislature over the Government of India (1921-39)	106
✓ CHAPTER XIII—Machinery of Dyarchy in Provinces ...	107-119
Central and Provincial subjects	107-108
Reserved and Transferred subjects	108-109
Relaxation in control over Provinces	109-110
The Governor ; powers	110-113
Two sides of Dyarchy ; Councillors and Ministers ...	113-115
The Provincial Legislature ; powers ; defects ; improvement ; value	115-119
CHAPTER XIV—Nature and working of Dyarchy ...	120-128
Finance under Dyarchy ; position of Services ; joint deliberation and separate responsibility ; division of subjects into Reserved and Transferred ; Ministers' dependence on the Governor ; Ministers and collective responsibility ; gains of Dyarchy	
CHAPTER XV—Non-co-operation Movement ...	129-141
✓ Rowlatt Bills	129-130
✓ Jallianwalla Bagh Tragedy	130-132
Hunter Committee Report	132-133

✓ Khilafat Movement ...	133-134
Why Congress decided for Non-co-operation ...	134-135
✓ Programme of Non-co-operation ; progress of the movement ; repression ; suspension ; defects ; contributions to national struggle ...	135-141
Liberals in Councils ...	141

CHAPTER XVI—Swaraj Party 142-148

- * Causes of the formation of the Party ; aims and principles ; work of the Swarajists ; Muddiman Committee ; Swarajists' drift towards co-operation ; appraisal of the policy of the Swarajists

CHAPTER XVII—Simon Commission and Nehru Report ... 149-158

✓ Composition of the Commission and its boycott ...	149-150
Simon Report ; its appraisal ...	150-152
✓ Nehru Report ; main provisions ; reactions to Nehru Report *	152-154
Dominion Status versus Complete Independence ...	154-155
Heading towards the Clash ...	155-156
Day of Independence ...	157-158

CHAPTER XVIII—Civil Disobedience Movement and Round Table Conferences 159-172

Congress decides for Civil Disobedience ; the Dandi March ; the movement and repression by the Government *	159-161
First Round Table Conference *	161-163
✓ Gandhi-Irwin Pact *	163-164
Second Round Table Conference *	164-165
Revival of Civil Disobedience Movement (1932-34) ; appraisal ...	166
Communal Award ; provisions ; criticism ...	167-170
Poona Pact ...	170
✓ Third Round Table Conference *	170-171
White Paper ; J. P. C. Report ...	171-172

Government of India Act, 1935 ... 173-222

CHAPTER XIX—Main features and Home Government 173-184

✓ Main features ...	173-175
* Nature of the Federation ; defects ; rejection ...	176-178
Nature of Safeguards ; origin ; history ; examples ; criticism ...	178-180
Home Government ; Secretary of State ; Advisers ...	180-181
High Commissioner for India ...	181
Expenses of the office of the Secretary of State ...	181-182

Control of the British Parliament over Indian affairs ; before 1919 Act ; after 1919 Act ; after 1935 Act	... 182-184
---	-------------

CHAPTER XX—Federal Centre*Federal Centre*

185-197

Governor-General and Crown's Representative ; powers	... 185-188
✓ Dyarchy at the Centre	... 188-190
Federal Legislature ; composition	... 190
Indirect election for the House of Assembly ; history and criticism of the indirect method	... 190-192
Council of State and House of Assembly ; powers	... 193-195
Federal Court ; composition ; jurisdiction ; importance	... 195-197

*Report of the***CHAPTER XXI—Machinery of Provincial Autonomy**

198-213

Relation between the Central and the Provincial Governments	... 198-200
Governor ; powers	... 200-204
Instrument of instructions to Governors	... 204-205
Council of Ministers	... 205-206
Second Chambers in Provinces	... 206-207
Provincial Legislature ; composition , powers ; improvements ; limitations	... 207-213

CHAPTER XXII—Nature and working of Provincial Autonomy

... 214-222

✓ Provincial Autonomy ; meaning ; change in the intention of the British Government ; election results in Provinces ; Interim Ministries ; Assurance Controversy ; Coalition Ministries and the Muslim League ; cry of Hindu tyranny ; part played by Governors ; working of Ministries ; part played by Services ; achievement of Ministries	
---	--

PART IV**BIRTH PANGS OF FREEDOM****CHAPTER XXIII—World War II and the Constitutional deadlock**

223-229

✓ World War II and the Congress attitude	... 223-224
Resignation of the Congress Ministries	... 224-226
August, 1940 Offer	... 226-227
Individual Civil Disobedience	... 227-228
Expansion of Viceroy's Executive Council	... 228-229

	PAGE
CHAPTER XXIV—Cripps Proposals	230-233
Causes which led to Proposals ; terms of the Proposals ; appraisal ; rejection	
CHAPTER XXV—Quit India Movement	234-238
Civil Disobedience Movement sanctioned ; Government precipitates the crisis ; extent of the Movement ; repression by the Government ; attitude of the various Parties towards the Movement ; Gandhiji's historic fast of 21 days	
CHAPTER XXVI—C. R. Formula and Wavell Plan	239-243
C. R. Formula and its rejection by Jinnah	... 239-240
The Wavell Plan ; why new offer ; terms of the Plan ; causes of its failure ; good that came out of the Plan	... 240-243
I. N. trial	... 243
CHAPTER XXVII—General Elections and Cabinet Mission Plan	244-254
Results of the elections	... 244
Cabinet Mission Plan ; terms ; Pakistan ruled out ; Grouping Controversy ; merits of the Plan ; criticism ; fate	... 245-253
Formation of National Government	... 253
Direct action by the League	... 253-254
Work of the Interim Government	... 254
CHAPTER XXVIII—Muslim Communalism and Pakistan	... 255-264
Growth of Muslim communalism ; till 1906 ; from 1906 to 1937 ; Fourteen Points of Jinnah ; attempt at unity foiled	... 255-259
Seeds of Pakistan ; causes which led to the demand of Pakistan	... 259-260
Two-Nation Theory ; basis ; criticism ; application to India	... 260-263
Why Pakistan formed	... 263-264
CHAPTER XXIX—Mountbatten Plan ; Partition and Independence Act	265-272
Britain decides to quit India	... 265
Mountbatten Plan ; terms	... 266-267
Why the Congress accepted Pakistan	... 267-269
The Independence Act	... 269-270
Causes of Independence	... 271-272

PART I

DESPOTISM AND THE RUDE SHOCK



CHAPTER I

INTRODUCTION

India has chosen to be a democracy. Democracy cannot be a success, unless its citizens are properly instructed or well-informed. No body can claim to be a well-informed citizen of India, unless he possesses an adequate knowledge of the basic principles of the Constitution of India. A knowledge of the Indian Constitution can hardly be adequate, unless one acquires, on the one hand, a historical appreciation of the constitutional development and, on the other, a general grasp of the national movement. It is primarily for these reasons that a synthetic study, like the present, is deemed essential not only for students of Political Science, but also for the general public in India. Such a knowledge is necessary to fit Indian citizens for the tasks and responsibilities of a young democracy.

The following are some of the important aspects of the National Movement and Constitutional Development of India :—

(i) Impact of National Movement on Constitutional Development : The constitutional development of India since 1857 cannot properly be appreciated without understanding the impact of the national movement on it.

The so-called Mutiny of 1857 was the most important cause of the taking over of the Indian administration by the Crown in 1858 and the initiation of the Policy of associating Indians with the administration in 1861. The birth of the Indian National Congress in 1885 and its demands during 1885-1891 led to the expansion of the Legislative Councils in 1892. The Morley-Minto Reforms of 1909 were accelerated by the Extremist movement which became sufficiently vocal after the Partition of Bengal in 1905. The famous Montagu Declaration of 1917 and the Act of 1919 were the inevitable consequences of the strength of the national movement during the Great War of 1914-18. The national movement during 1920-22 and the activities of the Swarajist Party in the Legislative Assembly of India from 1924 to 1927 probably led to the appointment of the Simon Commission

two years earlier, i.e., in 1927 instead of 1929, as laid down in the Act of 1919. The impatience and insistence of the national demand in 1929, exhibited by the Independence Resolution of that year and the Civil Disobedience movements of 1930-31 and 1932-33, led to the Gandhi-Irwin Pact, Round Table Conferences and the enactment of the Act of 1935. The 'Quit India' Resolution of 1942, followed by the unprecedented movement of 1942-45, brought the year 1947 within sight. During all these stages, for every constitutional advance, no doubt, there were also causes other than the national movement, but the *main cause* was undoubtedly the movement itself.

(ii) **Evolutionary nature of Constitutional Development :**

The administrative machinery which was handed over to Indians in 1947 is essentially of a historical and evolutionary growth.

The experiment in responsible Government was started under the Act of 1919, but its foundations were laid in 1861, if not earlier. It is difficult to appreciate the composition and functions of the legislative bodies set up under the Act of 1919, without understanding the expansion of the Executive Councils for legislative purposes in 1833, 1853, 1861, 1892 and 1909. The power of general "superintendence, direction and control", which the Secretary of State for India wielded over the entire Indian administration till 1947, was given to his predecessor, the Board of Control in 1784 under the Pitt's India Act. The powers and functions of the Governor-General-in-Council can be traced to the Regulating Act of 1773. The veto power which the Governor-General enjoyed against the majority decisions of his Executive Councillors till the end of the British rule was first given to Lord Cornwallis, as a special case, in 1786 and was made available to all Governors-General in 1793. The rules, regulations and laws framed by the East India Company for the administration of its 'factories', 'forts' and 'areas' were the starting points of the Indian administrative system, and of the great Civil, Criminal and Penal Codes, which were to govern the whole of this vast country. In fact, seeds of some of the present political institutions lie scattered over a period of three centuries.

(iii) **The White Man's Burden Theory :** Throughout the British rule in India the British statesmen had been proclaiming to the world that they were in India 'for India's good'; that they regarded themselves as 'trustees' of the Indian people; that they were in India to bear the 'White Man's Burden' and that it was their 'duty' to rule India till she was fit to govern herself.

All this talk is sheer self-delusion or mere pretence. There are some English writers, who have frankly expressed themselves, on the true import of this theory. In 1864, Sir G. M. Trevelyan said, "There is not a single person in India who would not consider the sentiment that we hold India for the benefit of the inhabitants of

India a loathsome un-English piece of cant."¹ Mr. Alfred Webb M.P., after spending some years in India, wrote in July 1908 : "The 'White Man's Burden' is sanctimonious twaddle, to justify the White Man in exploiting the coloured men for his own advantage." Rev. C.F. Andrews, the English missionary, once said, "Our whole British talk about being 'trustees of India' and coming out to 'serve her', about bearing the White Man's Burden, about ruling India for 'India's good', and all the rest is the biggest hypocrisy on God's earth."

The undeniable fact is that Great Britain ruled India for England's good. The real reason for the Englishmen to keep India in bondage was frankly confessed by Sir Joynson Hicks—the Home Secretary in Mr. Baldwin's Cabinet of 1924, who said, "We did not conquer India for the benefit of Indians.....We conquered India as an outlet for the goods of Great Britain. We conquered India by the sword, and by the sword we should hold it.....we hold it as the finest outlet for British goods in general and for Lancashire cotton goods in particular."²

No doubt, the British rulers gave India a mighty system of railways, a net-work of great roads, modern means of communications, and transportation, the single integrated political system and the like, which are India's permanent gains from her erstwhile British rulers. But all these instruments and institutions were also necessary for carrying on the British rule in India and for the comfort of Englishmen stationed here.

(iv) **Divide and Rule Policy :** Till the end of the British rule in India, the Hindu-Muslim antagonism had remained the greatest curse of the political life of India. In this connection, an American writer remarks, "Before the British came to India there seems to have been little hostility between Hindus and Muslims ; everywhere they seem to have lived together for the most part peacefully and harmoniously. It is true that before the coming of the British, there were sometimes wars between Hindu and Moham-medan States. But they were not the wars of religion, but simply wars caused by political quarrels, or by the ambitions of Rulers to gain new power or territory. Hindus lived in security and peace under Muslim Rulers and Muslims in peace and security under Hindu Rulers. Hindu princes appointed Muslims to high official positions, sometimes to the very highest and Muslim Princes were as generous in placing responsibilities and conferring honours on Hindus. In the native States today, where there are few British, there are few riots and very little enmity seen. It is only since British Rule in India began, and in those parts of the country where British rule is most directly and strongly felt, that hostility becomes

-
1. Major R. D. Basu : Rise of the Christian Power in India—Volume I, Preface p. XXVI.
 2. Navavidhan : April 7, 1927.

noticeable and riots of any importance appear."¹ Mahatma Gandhi said the same thing at the Round Table Conference in 1931, "This quarrel is not old.....I dare to say ; it is co-eval with the British advent."²

The conclusion is obvious. These differences were the creation of the British statesmen who, from the very beginning, depended on the policy of *Divide et impera* (divide and rule) to maintain and strengthen their hold over India. Lieutenant-Colonel John Coke, who was a Commandant at Moradabad about the time of the Mutiny, wrote, "Our endeavour should be to uphold in full force the separation which exists between the different religions and races, not to endeavour to amalgamate them. *Divide et impera* should be the principle of Indian Government."³ Sir John Strachey, who was an eminent British Indian Civilian and a writer, said, "The existence side by side of hostile creeds among the Indian people is one of the strongest points in our political position in India". A.O. Hume is stated to have confessed to Mahatma Gandhi that the British Government was sustained by the policy of divide and rule.

The Hindu-Muslim relations were embittered by the British statesmen by their conferring political favours on one community against the other and by introducing and perpetuating the virus of communal electorates in India.

What the British Government and their henchmen did to drive a wedge between the two communities will be explained in the course of the main narrative in this book. Here it may only be added that few will agree with Prof. Coupland's assertion that "Britain did not light the fire, (of Hindu-Muslim antagonism) nor has she been doing the devil's work of stoking it."⁴

(v) **An ominous aspect of the British Rule :** In one respect the British rule was quite different from the Muslim rule in India. The Muslim invaders and conquerors like Tamerlane and Nadir Shah came, plundered and left India. They disappeared as quickly as they came. When they left India had ample time to recuperate economically. The Mughals came and settled down permanently in India. They made India their home, identified themselves wholly with the interests of India, and ruled India as Indians. They were foreign only in the sense in which the sovereigns of England have been foreigners, since the time of William the Conqueror. The wealth of India remained in India, and she was not exploited economically. Late Prof. Brij Narain conclusively argues in his book 'Indian Economic Life', that the Indian peasants were economically better off under the Mughals than under the British rule.

1. J. T. Sunderland : India in Bondage, pp. 266-267.

2. Quoted by Coupland : The Indian Problem, Part I, p. 35.

3. Major Basu : Consolidation of the Christian Power in India, Chapter VI, p. 74.

4. Coupland—The Indian Problem, Part I, p. 35.

The British rule was altogether different, because the British throughout remained as foreign rulers and could not identify themselves with the people of India. The relationship that existed between English men and Indians was that of a master and a subject, which corrupted the British and demoralized Indians. From the Indian view point, the economic consequences of this relationship were deplorable in the extreme. The wealth of India continued to be constantly drained out of India, which became one of the main causes of her stark poverty under the British. Mr. Dadabhai Naroji—the Grand Old Man of India, in a letter dated November 27, 1905 addressed to J. T. Sunderland wrote, “The lot of India is a very sad one. Her condition is that of a master and slave ; but it is worse : it is that of a *plundered nation in the hands of constant plunderers with the plunder carried away clean out of the land.* In the case of the plundering raids occasionally made into India before the British came, the invaders went away, and there were long intervals of security during which the land could recuperate and become again rich and prosperous. But nothing of the kind is true now. The British invasion is continuous and the plunder goes right on, with no intermission, and actually increases and the impoverished Indian nation has no opportunity whatever to recuperate.”¹

(vi) **The method of non-violent Civil Disobedience :** The most outstanding contribution of the Indian National Movement is that it carried on the civil disobedience on non-violent lines. Civil Disobedience has, often, been used in the past, against oppressive governments, national as well as foreign. But it was only in India that Civil Disobedience was conducted on non-violent lines and that too, on an unprecedented scale. The actual success of the movement in wresting Independence from the British will remain a marvel of world history. The credit for conducting the Civil Disobedience movement on non-violent lines belongs to Mahatma Gandhi, whose greatness lies, not in inventing the method—the principle of *Satyagraha* was known before him, but in putting it to a use and in a way unheard of before.

The main stock of the Indian population, i.e., the Hindus who have borne the brunt of the national movement in India, are peace-loving and non-violent at heart. This is partly due to the teachings of the ancient Indian scriptures and partly because of the influences of Buddhism and Jainism, which eschew violence even to animals and birds. It is doubtful if any other people will ever be able to make a similar use of this method, which calls for tremendous suffering and self-sacrifice for a right and truthful cause.

Sometimes a question is posed whether Indians would have been able to achieve Independence for India, so soon and with so little sacrifice, by using violent methods. Many believe, and they are probably right, that it would have been exceedingly difficult,

1. J. T. Sunderland—India in Bondage : p. 335.

if not impossible, to do so. Indians, as a people, were systematically disarmed after the Mutiny. The Hindus by nature are averse to violence. The capacity of the British Government to crush a violent movement was admitted on all hands. It is, therefore, emphasized by some that it was also an act of practical wisdom to wage the movement on non-violent lines.

It is equally doubtful, if such a movement could have ever succeeded against a ruler like Mussolini or Hitler or Stalin, who would have crushed it in no time, without paying any heed to moral appeal or conscience. Non-violence to be successful, in such a struggle, pre-supposes a certain amount of tolerance, benevolence and responsiveness to higher values on the part of the adversary, against whom it is used. In India, non-violence has succeeded partly because the English character is elegantly humane, liberally and democratically fed.

(vii) **Lesson from Indian History:** India had lost to invaders and conquerors, whenever her central power grew weak and territorial or provincial jealousies reigned supreme. As an instance, the foundation of the British Raj in India began to be laid when, after the death of Aurangzeb in 1707, the central government in India became very weak and the provincial chiefs began to fight against one another for supremacy. Moreover, examples are not lacking, showing how out of mutual jealousies or personal ambitions, provincial chiefs helped even foreigners against one another, which resulted in the eventual enslavement of all. The battle of Plassey might have been a different story, but for the treachery of Mir Jafar. The Indian Princes showed a lamentable lack of far-sightedness when they accepted help from the British settlers against one another. While speaking at Coimbatore on December 25, 1955, Mr. Jawahar Lal Nehru said : "*The real lesson of history during the past 1000 or 2000 years is...that we were falling out among ourselves and because of lack of unity, despite all the other virtues, we suffered. Therefore, now that we are free and independent, we have to build up this unity and everything that comes in the way of unity must be brushed aside. I want that (we) should break down the psychological barriers, religious barriers, state barriers and caste barriers, so that the feeling of unity may increase among us and strengthen the country.*"¹ This also explains the anxiety on the part of the framers of our present Constitution to make the central government strong and provide safeguards against all forms of disruptive tendencies.

1. Report in Hindustan Times dated, 26th December, 1955.

CHAPTER II

CONSTITUTIONAL DEVELOPMENT TILL 1857

The coming of the British : The British came to India as traders. They were attracted by the stories of the fabulous wealth of India. The first Royal Charter was granted in 1600 by Queen Elizabeth to a Company of traders, later called the East India Company, giving them exclusive right to trade with the East Indies. This Charter was followed by later Charters in 1609, 1661, 1669, 1677, 1683 and 1686, which made the Company, by degrees, a semi-sovereign body competent to make civil, criminal and military laws regarding its servants in India and even to declare war and enter into peace with non-Christian powers.

During the period of these Charters, servants of the Company made huge fortunes for themselves and earned rich dividends for the shareholders. When the servants of the Company returned to England, they displayed enormous riches and came to be known as "Nabobs". This made other British traders jealous of them. The latter began to dispute the right of the Crown to grant a monopoly of trade to anybody. As a result of this controversy, the House of Commons passed the famous resolution of 1694 which laid down, "that all subjects of England have equal rights to trade with the East Indies, unless prohibited by the Act of Parliament". In 1698, in view of this resolution, a new Company was registered for trade with the East Indies. Both these Companies were amalgamated in 1708 to end the unhappy rivalry which had developed between them. The Charters of 1726, 1753 and 1758 followed which extended the powers of the Company still further.

'Trading Centres' of the Company : The Company was successful in building three main 'factories' or trading centres in the towns of Bombay, Calcutta and Madras. Each factory was like a small colony, having within itself all the warehouses and offices of the Company. It was a fortified place. A band of soldiers, English as well as Indian, was kept by each factory for security purposes. The servants of the Company were paid very meagre salaries, but were compensated for by the grant of a right to trade as individuals. This arrangement was economical for the Company and lucrative for its servants. It continued to work well so long as the Company remained a trading corporation. Later on, when the Company began to acquire political power this right of its servants to trade as individuals, resulted in the worst form of tyranny and exploitation of Indians. The political power was freely used by the servants of the Company to exploit trade and business relations.

Each 'factory' was under the control of the 'President' or the Governor-in Council. The Governor was sent usually from England, but the Councillors were normally appointed from the senior-most servants of the Company working in India. The form of the executive was collegiate. The Governor was regarded as one of the Councillors, at best, the first among equals. Decisions were taken by a majority vote. The members of the Council were expected to exercise a check on the powers of the Governor, because he was far away from the active control of the authorities in London.

Extent of power derived from Indian Authorities : The authority of the East India Company was derived from two sources. It was partly derived from the British Crown and Parliament and partly from the Moghul Emperors and other Indian rulers, who permitted these British traders to build business houses in India as a matter of civil right. As was but natural, these early British traders bowed and begged at the court of the mighty Moghul Emperors and the provincial Chiefs for various types of concessions, e.g., permission to build storehouses and 'factories', the right of keeping soldiers for security purposes, etc. It may be stated that the early British traders were entirely at the mercy of the Indian rulers for more than a century. Positions of vantage from which they struck blows at Indian authorities were acquired by them, as a matter of concession, from those very dignitaries, who reposed confidence and trust in them !

Opportunity for Intrigues : In 1707, the last great Moghul ruler, i.e., Aurangzeb died. The line of Emperors after Aurangzeb was unexpectedly weak. The control of the central government became almost extinct. A riot followed throughout India. The various chiefs, chieftains and feudal lords, scattered throughout India, began to assert sovereign rights over the territories under their respective control. The Sikhs became supreme in the Punjab. The Marathas established their supremacy over the whole of the Peninsula. The Rajput states declared themselves independent. The Governors of Oudh and Deccan absolved themselves from the allegiance of the Moghul Emperors. The Afghan soldiers captured Rohilkhand. The Maratha warriors, Holkar and Scindia partitioned Malwa into two parts and established two separate dynasties. India thus became 'balkanized'. There ensued never-ending mutual jealousies and conflicts among these rulers. As a result, India became a house divided against itself, without any effective central controlling power. Such a deplorable state of affairs was an invitation to any military adventurer. The East India Company had the advantage of being on the spot. Its daring members were not slow to realize that condition in India was such that it could easily be exploited for laying the foundations of a British Empire in India. The game of power politics and intrigues was started by the Company with a view to acquire territorial possession.

Rivalry between European powers in India : Four European powers had established themselves in India for purposes of trade. Everyone of them wanted to acquire supremacy over the others in the scramble for power. The English were able to eliminate easily the Dutch and the Portuguese in the struggle that followed. The French also collapsed eventually, leaving India to the sole domination of the British.

Success of the Company in Bengal : In Bengal, the British were specially successful in their designs. With the accession of Siraj-ud-Daula to the office of the Nawab, trouble started between him and the Company. This resulted in the Battle of Plassey in 1757, which brought a disastrous defeat for the Nawab, due mainly to the treachery of his Commander-in-Chief, Mir Jafar. This even made the Company almost a *de facto* sovereign over Bengal. Henceforth, the Nawab of Bengal became merely a puppet in the hands of the Company. In 1757, Mir Jafar was put in charge of Bengal by the Company and he granted to the Company the zamindari of the Twenty-four Parganas. In 1760, Mir Jafar was removed and Mir Kasam was elevated to Nawabship, who gave to the Company the districts of Burdwan, Midnapur, and Chittagong as a price for this elevation.

The Grant of Diwani Rights : In 1764, the Battle of Buxar was won by the British. It was a victory against the Nawabs of Oudh and Bengal as well as against the Emperor of India, under whose legal authority the war was waged by the Nawabs. No doubt, by then, the Emperor was only a figurehead. But English victory had a great psychological effect over Indians as well as Englishmen. For Indians, the event was depressing in the extreme; for the British, it was equally elevating. As a result of this war, three separate treaties were signed. The Nawab of Oudh was deprived of the two districts of Karrah and Allahabad. Thus, the Nawab was mildly dealt with, this being his first clash with the Company. The Nawab of Bengal was deprived of all real powers. He was reduced to the position of a virtual political pensioner. Almost complete control over the administration was taken up by the Company in Bengal. The Company selected Mohammad Reza Khan for the office of Naib Suba. The Nawab having been made powerless and the Naib being one who was the nominee of the Company, all strings of administration were now concentrated in the hands of the Company. The Emperor Shah Alam was made to agree to the grant of the Diwani Rights to the Company which meant the collection and administration of the revenue of Bengal, Bihar and Orissa and the right of administering civil justice in those areas. The Company was already the *de facto* sovereign of these areas. The Diwani gave the Company some legal title.

DOUBLE GOVERNMENT IN BENGAL (1765-1772)

Clive had won the Battle of Plassey for the Company. In 1765, he was called back to India and was amazed to hear about the

outcome of the Battle of Buxar. He knew full well that the Company was not in a position to undertake the actual administration of these areas. The authorities in London were also not willing to assume responsibility for the actual administration of the country. The servants of the Company in India as well as the Directors were mainly concerned with making as much money as possible for themselves through the Company. It was for this reason that Clive created the smoke-screen of the Diwani to hide their virtual supremacy over these areas and yet to give it a legal touch. He feared that unless this was done, other European powers, his countrymen and the Government in England would not permit them to enjoy and exploit those areas without intrusion.

This led to the adoption of the system of Double Government in Bengal. Mohammad Reza Khan had already been appointed by the Company as a puppet *Naib Nawab*. The revenue collection and civil and criminal justice were allowed to remain in Indian hands; whereas "the superintendence of the collection and disposal of the revenue" was undertaken by the Company. This was a case of overall control without assumption of any responsibility for the details of the administration.

The whole transaction of Diwani had an atmosphere of extreme unreality about it, because the Emperor who granted it, had no actual power over Bengal at the time of this grant.

Evils of the system of Double Government: The chief defect of the scheme was that it separated power from responsibility. The servants of the Company wielded power without being responsible for the good government of these areas. This system of Double Government in Bengal resulted in the worst form of exploitation of the natives of those provinces and is regarded as the blackest chapter in the history of the administration of the Company. The Company and its officers enriched themselves enormously as a result of the political power wielded by them. The Nawabs were changed in quick succession in order to extract huge presents from those who succeeded. The Company claimed exemption from tolls for its goods, to which the Indian goods were subject. This ruined the native traders. The servants of the Company fixed their own prices for the goods they bought and sold. As Verelst pointed out, "Such a divided and complicated authority gave rise to oppressions and intrigues unknown in any other period." Richard Bacher wrote: "It must give pain to Englishmen that since the accession of the Company to the Diwani, the condition of the people of the country had been worse than it was ever before." Sir Lewis said, "No civilized government ever existed on the face of this earth, which was more corrupt, more perfidious and more rapacious than the Government of the East India Company from 1765 to 1772." The controlling authorities were corrupt to the extreme. The actual administration was in the hands of persons who were weak and demoralised. In 1773, even Clive was accused in the House

of Commons of misappropriating the revenues of Bengal. The reply of Lord Clive was, "After having nearly exhausted a life full of employment for the public welfare, and for the particular and advantageous emoluments of the East India Company, I little thought, *transactions of this kind* would have agitated the minds of my countrymen."¹ This was tantamount to an admission of the substance of the charge and was in the nature of a petition for mercy on the ground of other services rendered !

The system of Double Government in Bengal, set up after the grant of the Diwani, ended in 1772, when Warren Hastings was sent as the Governor of Bengal with the definite instructions to end this system of dual authorities. Henceforth, the servants of the Company not only enjoyed power, but also became responsible for the actual administration of areas under them.

REGULATING ACT, 1773

After the grant of the Diwani in 1765, a great agitation for parliamentary intervention in the affairs of the Company started in England. From 1767 onwards, the Company was required to pay an annuity of £400,000 as a tribute to the British Exchequer in consideration of their retaining the territorial acquisitions and revenues derived therefrom, which the Company continued to pay for some years. Burke called this annual payment by the Company to the British Exchequer a "crime tax," because as the result of this payment the British Parliament withheld interference all these years and thus connived at the exploitation and misrule of the Company.

Causes of the Parliamentary enactment : By 1773, the Company was not in a position to pay £400,000 a year to the British Exchequer. Its financial position became so bad that it even approached the British Government for a loan. This provided an excuse and an opportunity for the Parliament to undertake the regulation of the affairs of the Company forthwith. Moreover, from all evidence, it was clear that the Company was mercilessly exploiting the natives and its administration was corrupt to the core. Intervention was considered necessary to save the fair name of England. Furthermore, intervention was justified, because it came to be realized that a commercial corporation was hardly competent to perform the functions of a political body. And, finally, it was feared that the officers of the Company resident in England, because of their enormous ill-gotten riches, might acquire control over the internal administration of England.

In 1772, a Committee was appointed to present a secret report regarding the administration of the Company. The Committee gave a very adverse report against the Company, as a result of which the Act of 1773 was passed.

1. C. L. Anand : 'Government of India', p. 9.

Main Provisions : Till 1773, the Governments of the three Presidencies of Bengal, Bombay and Madras were independent of one another. The Regulating Act made, in the first instance, the Presidency of Bengal supreme over those of Bombay and Madras. The Governor of Bengal was made the Governor-General of the three territories. The Governor-General-in-Council were given the power of "superintendence, direction and control" over the remaining two Presidencies. The subordinate Presidencies were not to declare war or peace (except in a case of absolute urgency) without the previous sanction of the Bengal Government or of Directors in England. They were to keep the Bengal Government as well as the Directors in England regularly and fully informed, and were expected to carry out the orders of these authorities. The Bengal Government was given the power to suspend, in case of need, the President and Council of a subordinate Presidency.

Secondly, the Governor-General was to be assisted by four Councillors. Their tenure of office was fixed at 5 years, and they were not removable during this period except by the Crown on the representation of the Directors. The Governor-General and his Council were required to work on the principle of a collegiate executive. All decisions were to be taken by a majority vote. The Governor-General was given a casting vote in case of a tie. He was not given the power to over-ride a majority decision of the Councillors. As the Councillors were four in number, whenever three of them combined, they had their way against the wishes of the Governor-General.

Thirdly, the Governor-General-in-Council were required to obey the orders of the Directors and keep them constantly informed about all matters relating to the interests of the Company. This was an attempt to establish clearly the subordination of the Indian authorities to the rulers in England. The Directors were required to keep the Treasury (British Government) informed about the civil, military and revenue affairs of the Company. Herein was a clear assertion that the British Parliament could interfere in the affairs of a private corporation, which had taken up political activities.

Fourthly, the Governor-General-in-Council were empowered to make rules, ordinances and regulations for the better government of the Company's entire territories. This may be described as the beginning of the law-making power of the Government of India. All these regulations required registration in the Supreme Court, which implied the approval of the Court to them. This placed the highest Executive in India under a judicial veto. Power was also reserved to the King-in-Council to disapprove any of these rules within two years.

Fifthly, the Supreme Court of Judicature was established at Calcutta, consisting of a Chief Justice and three other Judges. They

were to be appointed by the Crown. The Court was given full power of exercising civil, criminal, admiralty and ecclesiastical jurisdiction over all British subjects and servants of the Company in all the territories of the Company. The Court was also given power to hear cases arising out of contracts between the British subjects and natives of India, when the latter had agreed, while entering into the contract, to accept the jurisdiction of the Supreme Court. Appeals from the decisions of the Supreme Court lay before the King-in-Council.

Sixthly, the Governor-General, his Councillors and the Judges of the Supreme Court were given handsome salaries. The servants of the Company were forbidden to take bribes or accept presents. They were asked not to undertake any private trade. These provisions regarding the servants of the Company were made to purify the administration.

Lastly, since 1657, a member holding stock worth £500 could vote for electing the Directors. The Regulating Act gave this right of voting only to those share-holders who possessed shares worth £1,000. This made the Directors still more oligarchical in character.

Importance of the Act : "The Act of 1773 is of great constitutional importance, because it definitely recognized the political functions of the Company, because it asserted for the first time, the right of the Parliament to dictate the form of government what was considered till then the private possessions of the Company (by an important section of the people of England) ; and because it is the first of a long series of Parliamentary Statutes that altered the form of government in India".¹ Moreover, it was the first attempt on the part of the British Government to centralize the administrative machinery in India, which was a step in the right direction. Co-ordination and unification of the policies of the three Presidencies were essential for efficient administration. A central control was also necessary for consolidating the vast territories recently acquired by the Company. The Act made an earnest attempt to purify the administration by forbidding the acceptance of presents or engaging in private trade on the part of the servants of the Company. The Act set up a written constitution for the British possessions in India, in place of, more or less, an arbitrary rule of the Company. The act provided the framework for all constitutional enactments that followed. The collegiate system was introduced to prevent the Governor-General from becoming autocratic.

Defects of the Regulating Act : As the Regulating Act was the first endeavour on the part of the Parliament to regulate the affairs of the Company, it had all the defects of an amateurish attempt. The intention of the Parliament was no doubt good ; but the steps taken were, in part, defective.

1. G. N. Singh : *Landmarks*, pp. 14-15.

It was wrong in principle to set up a collegiate executive. Apart from the Governor-General, there were four councillors. Of the first batch, one was promoted from the servants of the Company in India and the other three were sent to India from the public life of England. These three men came with a good deal of prejudice against Warren Hastings and the administration of the Company. They landed in India with a firm determination to assert themselves and to set the Company's administration right. As the decisions of the Governor-General-in-Council were to be taken by a majority vote, these three members, when combined, were able to get their decisions prevail over those of Warren Hastings and the fourth member. As the total number was five, the casting vote of the Governor-General was hardly of any avail. The result was that Warren Hastings was constantly overruled and had to implement decisions, which he himself did not approve of. This made the position of the Governor-General extremely awkward.

Moreover, because of certain loop-holes, the authorities of Madras and Bombay were able to ignore the orders of the Governor-General-in-Council. The war with the Marathas and the war with Hydar Ali were the results of independent actions of the subordinate Presidencies. The Government of Bengal was put in an embarrassing position, because they had to pay for these wars and also to share political responsibility for these actions. At times, the Presidencies ignored the Bengal Government on the pretext of urgency and, at other times, they started action after getting the permission of the Directors direct over the head of the Bengal Government.

Besides, the constitution of the Supreme Court was defective in many ways. Its jurisdiction was vague. It was established, no doubt, with the purpose of improving the administration of justice and to act as a restraint on the arbitrary actions of the executive. But it was not made clear, what law the Supreme Court was to administer. The relations of the Governor-General-in-Council and the Supreme Court were not laid down precisely. Nothing was mentioned about the relation of the Supreme Court with the pre-existing courts in these Presidencies. It was not clear what persons came under the jurisdiction of the Court. It was difficult to define who came under the clause 'British subject'. It was also not clear which categories of persons were considered to be in the service of the Company. The Supreme Court claimed jurisdiction over the whole Indian population. It also claimed the right to try the English and Indian officers of the Company for acts done by them in their official capacity. It also claimed the right to take action against the judicial officers of the company for acts done by them in the execution of their judicial duties. The Supreme Court applied mostly the English law and English legal principles and paid scant regard to local customs and traditions, which meant hardship in many cases. The quarrels and clashes between the Supreme

Court and the Governor-General-in-Council became a matter of constant occurrence. As a result, the Supreme Court which was intended to be a guardian of the rights of the people and dispenser of justice among them became an instrument of oppression.

BENGAL JUDICATURE ACT, 1781

The object of this Act was to remove ambiguities and uncertainties about the powers and the jurisdiction of the Supreme Court and to define precisely its relations with the Governor-General-in-Council and the Company's Courts, and to lay down, what laws the Supreme Court was to administer. It was laid down that the Supreme Court had no jurisdiction in matters concerning revenue or the collection thereof. The judicial acts of the judicial officers of the Company's courts were also declared to be beyond the competence of the Supreme Court. The Governor-General-in-Council were declared to be the appellate authority over the Company's Courts. The rules and forms of the Supreme Court were to respect the religion and usages of the people of India. Only Indians living in the town of Calcutta were to be subject to the jurisdiction of the Supreme Court. In the case of Mohammadians, the Mohammeden law and usages were to apply and Hindus were to be governed by their own laws and usages. Thus, it will be seen that, this Act was an attempt to remove some of the defects which became visible in the working of the Supreme Court and to which reference had already been made.

PITT'S INDIA ACT, 1784

In the title of the Act, the Company's territories were called 'the British Possessions in India'. This was the first clear assertion of the Crown's claim of ownership over the Indian territory acquired by the Company. Here was an unmistakable expression of the fundamental rule that 'the acquisition of sovereignty by subjects of the Crown is on behalf of the Crown and not in their own right'.

Main Provisions : In the first instance, a Board of six Commissioners was set up, which was popularly known as the Board of Control. The Board consisted of the Chancellor of Exchequer, one of the Secretaries of State and four Privy Councillors to be appointed by the Crown. The Board was given the power to 'superintend, direct and control' all civil, military and revenue affairs of the Company. Thus, the controlling authority of this Board over the Directors was specifically laid down. The Act created a separate department of the British Government in England, whose only function was to exercise control over the Directors of the Company and the Indian administration. As time passed, the Chancellor of Exchequer, the Secretary of State and the three ordinary Councillors stopped attending the meetings of the Board altogether.

and the President of the Board became all in all. He was, invariably, a member of the British Cabinet. This system of Government, introduced by the Pitt's India Act, is often described as the system of Double Government in England. Two sets of functionaries were recognised for controlling the Indian administration from England. On the one hand, there was the Board of Directors which was in immediate charge of the Indian administration. Patronage or appointments as well as the trading activities of the Company remained in the hands of the Directors. On the other hand, there were the representatives of the Crown, i. e., the Board of Control, who was to exercise control in all matters of policy over the Directors and the Indian administration. The Directors, no doubt, retained their previous status ; but they were now made subject to the indirect control of the Government of Great Britain. The Board of Control was, in a way, an annexe of the Ministry of the day. Its President changed with the change of the Cabinet in England.

Secondly, a Committee of Secrecy of not more than three members was appointed out of the twentyfour Directors. All secret orders of the Board were to be transmitted to India through this small body. The other members of the Court of Directors could thus be ignored in important matters.

Thirdly, the number of Councillors of the Governor-General was reduced to three, including the Commander-in-Chief. This was done to increase the effectiveness of the casting vote of the Governor-General. In a body of four, the Governor-General could have his way by getting only one member on his side. The difficulties experienced by Warren Hastings in his Council were thus sought to be avoided. The Councillors, henceforth, were to be appointed from the senior servants of the Company.

Fourthly, the Presidencies of Madras and Bombay were also given the form of Government prevailing in Bengal. A Governor and three Councillors, including a Commander-in-Chief were appointed in each of the two Presidencies.

Fifthly, the power of the Bengal Government to "superintend, direct and control" the affairs of the subordinate Presidencies was made more definite and real.

Lastly, the Court of Proprietors were deprived of their control over the Directors who were thus freed from the sinister influence of persons, whose only interest was to get huge dividends.

The Pitt's India Act thus set up, for the first time, a regular instrument of the British Parliament to control the affairs of the East India Company. By introducing the 'Committee of Secrecy', it made the working of the Directors more efficient. It was a step in the right direction to deprive the Proprietors of their power of interference in political matters. It was also good to strengthen the position of the Bengal Government, i. e., the Governor-General-

in-Council over the other two Presidencies. The system of Double Government introduced by the Pitt's India Act continued right up to the year 1858, when the dual system was scrapped, the Directors and the Company were completely wound up and the entire Indian administration was legally and formally placed under the direct charge of the Crown.

Veto power to Lord Cornwallis : In 1786, Cornwallis was offered the Governor-Generalship. He was a great administrator and his appointment was being made on merit. This enabled Cornwallis to dictate his own terms for accepting the job. He was fully aware of the pitiable position of Warren Hastings in his Council because of the opposition of his Councillors. Cornwallis, therefore, laid down the condition precedent to his accepting the post that he should be given the power to over-rule a majority decision of his Council, whenever he considered necessary. This power was allowed to him, as a special case, by the Amendment Act of 1786. Cornwallis was sent by Britain to India to improve the administration, to put the Indian house in order and to do something in order to improve the condition of the people. He brought about many judicial and revenue reforms, which stand to his eternal credit.

CHARTER ACT OF 1793

In 1793, the power of over-riding a majority decision of the Councillors was extended to all Governors-General and the Governors. But it was laid down that this power was to be used only in exceptional cases of high importance. The Act extended the privileges of the Company for another 20 years. It will be noted that the Acts, subsequent to the Regulating Act, were passed after every twenty years, i. e., 1793, 1813, 1833 and 1853.

CHARTER ACT OF 1813

Main Provisions : In 1813, when the time came for the renewal of the Charter Act of 1793, the principle of free-trade and *Laissez faire* was popular in England, as the result of which agitation began once again demanding the opening of the Indian trade to all English citizens. Accordingly, under the new Charter of 1813, trade with India was opened to all British citizens except the tea trade and trade with China. With this opening of the trade to all, it was feared that a large number of Englishmen would start going to India. Hence a system of permits and licences was introduced, according to which, all those persons who wanted to go to India were required to get permits for that purpose.

Secondly, the Governor-General, Governors and Commanders-in-Chief were henceforth to be appointed by the Court of Directors "subject to the approbation of His Majesty to be signified in writing under the Royal Sign Manual, counter-signed by the President of the Board of Control". This really meant the approval of

the President of the Board, which was, in fact, the approval of the Ministry. Thus under the Charter of 1813, the biggest appointments also came under the control of the Board. This was not insisted upon at the time of the Pitt's India Act.

Lastly, a Church establishment was created in India at the expense of the Company. The Act granted permission to "all persons going and remaining in India to introduce among the natives useful knowledge and religion and moral improvement." This was the beginning of the effort to spread Christianity in India and to introduce the Western system of Education. To hide the sinister object of this move, the Charter asserted that the policy of the Company was of "perfect freedom to the natives in the exercise of their religion". An annual grant of Rs. 100,000 was also sanctioned in the Act to be "applied to the revival and improvement of literature and the encouragement of the learned natives and for the introduction of the knowledge of sciences," evidently, to prevent misgivings about the attempt to spread Christianity in India.

CHARTER ACT OF 1833

This Charter was also preceded by an exhaustive inquiry into the affairs of the Company. It was an elaborate Act and was intended to improve the administrative system of India. The Company was granted extension of life for another twenty years, but the words "in trust for His Majesty and His heirs" were added.

Main Provisions : Firstly, the Governor-General of Bengal was made the Governor-General of India and was given full authority to "superintend, direct and control" the Governments of the remaining parts of India in all matters, relating to the civil, military and revenue administration. Henceforth, the Government of India was to be kept informed on all important matters. Even in matters left to the local Governments, they were expected to put the Bengal Government in such a position as to exercise control, whenever the latter thought proper. Copies of all communications sent by the local Governments to the Court of Directors were to be supplied to the Supreme Government, who were to forward the same to the Court with their own remarks. All questions of peace and war were to be decided by the Central Government alone and diplomatic relations with the Indian States were to be carried on by the Supreme Government, as far as possible. This was an attempt to make the control of the Central Government still more effective.

Secondly, the over-riding power over their Councils, given to the Governor-General and Governors under the Act of 1793, was further defined and the Governor-General was required to state in writing the reasons for the rejection of a majority decision. The Councillors were also expected to record in writing the reasons for their view in such cases. This power was declared as extra-

ordinary. It was added that "occasions which compel the use of these extra-ordinary remedies occur rarely in a well-governed State".

Thirdly, the monopoly of trade with China and the tea trade was also withdrawn. By now, it became impossible to justify the monopoly on any ground whatsoever. As the Court of Directors had no further commercial business to transact, the Board was given control over all their actions.

Fourthly, the Act laid down, "No native of the said territories nor any natural born subject of His Majesty, resident therein, shall by reason only of his religion, place of birth, descent, colour, or any of these be disabled from holding any office or employment under the Company." This might have been a sincere enunciation of the administrative policy by the authorities in England; but it was not carried out in practice for many years by the authorities in India. No Indian held a job worth more than Rs. 2000 a year till 1857. Cameron, President of the Indian Law Commission, said in 1853, "The Statute of 1833 made the natives of India eligible to all offices under the Company. But during 20 years that have since elapsed, not one of the natives has been appointed to any office, except such, as they were eligible to before the Statute."

Fifthly, a duty was laid on the Governor-General-in-Council to pass legislation for improving the condition of Indians without injuring their sentiments. The Indian Slavery Act and many later progressive enactments were the result of this policy.

Sixthly, the legislative power was exclusively vested in the Central Government and the Provincial Governments were deprived of this power except in emergency. This was done in the interest of uniformity and centralization. The legislative powers vested in the Central Government were, however, subject to the laws made by the Parliament and its over-riding authority as well as the authority of the Directors. The laws of the Central Government no longer required registration in the Supreme Court as hitherto.

Seventhly, a fourth Member was added, for purely legislative purposes, to the Governor-General's Council and was called the Law Member. He was to sit and vote only whenever any piece of legislation was being undertaken. It was laid down that this additional Member was not to be chosen from the servants of the Company in India, but was to be a man of legal attainments from England. Lord Macaulay was the first man to be appointed to this post. It was recommended in the Charter that the Indian Laws should be codified and consolidated. The Governor-General was authorised to appoint an Indian Law Commission for this purpose.

Lastly, the system of licences and permits for coming to India was discontinued and the Britishers were allowed to come to India freely.

Thus it will be seen that the Act of 1833 was mostly an attempt at centralization. Its innovation was the expansion of the Governor-General's Council for legislative purposes ; which experiment was continually extended by the inclusion of more and more additional members for legislative purposes upto 1909 and was the starting point of our legislative bodies in India. A beginning was made in the Act for separating the executive and legislative functions.

THE ACT OF 1853

The Parliamentary enactments of 1793, 1813 and 1833 had invariably been preceded by a thorough Parliamentary inquiry into the affairs of the East India Company and its administration. When the time approached for the enactment of the Act of 1853, there was made a regular demand by Indians that the system of the Double Government introduced by the Pitt's India Act should be abolished ; and that the Indian affairs should be brought under the charge of a Secretary of State, assisted by a Council of experts. It was also pointed out, in the representation signed by a large number of Indians and submitted to the Parliament that, the pledge given in the Act of 1833, regarding the appointment of Indians to higher jobs, had never been carried out in practice. It was also demanded that the Indian Civil Service examination should be thrown open to the public.

Main Provisions : Hitherto, the practice was to specify the period for which extension was allowed to the East India Company. In the Act of 1853, no such period was fixed. It was merely stated that the administration of the East India Company would remain "until the Parliament otherwise directs." This was a clear indication of the direction in which the mind of the British Parliament was moving regarding the East India Company.

Secondly, whatever little power was left with the Court of Directors by 1853 began to be universally resented. Moreover, its strength of 24 members was rightly regarded as somewhat unwieldy. Hence the number was reduced from 24 to 18. Six Directors, out of the eighteen, were to be appointed by the Crown, instead of the Court of Proprietors. The establishment of the Board of Control and the emergence of the 'Secret Committee' of the Directors had already relegated the remaining Directors to a position of unimportance. The appointment of the six Directors by the Crown was a further indication that whatever power was left with the Proprietors was to be exercised on sufferance.

Thirdly, in 1833 the Law Member had been added to sit and vote in the Imperial Legislative Council only for legislative purposes. Immediately thereafter a practice grew by which he was permitted by the Governor-General to attend meetings of the Executive Council, held for other than legislative purposes. It was considered necessary to do so, to enable the Law Member to discharge his legislative

duties effectively, by acquiring knowledge about the other sides of the administration. The Act of 1853 made the Legislative Member an ordinary member of the Executive Council. In the Act of 1833, the legislative functions of the Executive Council were differentiated by the addition of a Legislative Member. In the act of 1853, these functions were further demarcated and their special nature was emphasised by the enlargement of the Council for legislative purposes, by the inclusion of the Chief Justice of Bengal, one more Judge of the Supreme Court, and four representatives of the government of Bengal, Madras, Bombay and North Western Provinces—the last four to be appointed by the governments of those Provinces from among their senior servicemen. Thus, in all, there were twelve members for legislative purposes, i.e., Governor-General, Commander-in-Chief, four ordinary members of the Executive Council and six more added by the new Act. It should be noted that the six members, added by the Act of 1853, were meant to be specialists for performing legislative functions. We may also note that the official character of the Legislative Council was fully maintained. All the additional six members were nominated officials. The sittings of the Council for legislative purposes were made public and its proceedings began to be officially published. This meant an admission that the legislative functions of the Council required public approval and co-operation.

Fourthly, a provision was made for the appointment of a separate Governor for Bengal ; although no Governor was actually appointed for Bengal before 1912. The Directors were further authorised to create a new Presidency with a Governor and a Council or to authorise the appointment of a Lieutenant-Governor. In 1853, under this authority, a Lieutenant Governor was appointed for the Punjab.

Fifthly, hitherto appointments were mostly in the hands of the Directors, except those of the Governor-General and **Governors**. This power of making appointments was formally taken away from the Directors. The Board of Control was authorised to make rules and regulations governing appointments to the Services in India. As a result, the Indian Civil Service Examination was thrown open to the public and entry to that Service was made possible through an open competition. This was an attempt to end the reign of corruption, nepotism and favouritism carried on by the East India Company in the matter of these appointments.

Sixthly, in 1853, Indian Law Commission had been appointed with Lord Macaulay, the Law Member, as its Chairman. This was done for the purposes of condification of the substantive and procedural laws in India. Till then the laws which were applied in India were a bewildering mass of conflicting and confusing rules. In 1853, English Commissioners were appointed to consider and examine the recommendations of the Commission. On the basis of the labours of the above-mentioned bodies, the Indian Penal Code,

Indian Civil Code and the Indian Code of Criminal Procedure were drafted and adopted which, even to the present day, govern our system of judicial administration and are monuments of comprehensiveness, lucidity and brevity.

Finally, besides the Provinces which were under the charge of the Governors and Lt.-Governors, there were large areas of Indian territory which were, till then, directly under the administrative control of the East India Company. The act authorised the Governor-General-in-Chief (with the approval of the Court of Directors and the Board of Control) to create administrative Units out of those areas and to appoint authorities to administer them. Some more Provinces and Chief Commissioners' Provinces were created under this authority.

The most striking provision of the Act of 1853 was the *extension* of the Executive Council of the Governor-General for legislative purposes. "Legislation for the first time was treated as a special function of government requiring special machinery and special process."¹ Almost immediately after its inception, the so-called Legislative Council began to transact its business somewhat on the lines of the British Parliament. Its proceedings began to be published and held in public. The three readings and the committee stage soon developed. The Council assumed the functions of 'a petty Parliament' or 'an Anglo-Indian House of Commons'. It began to ventilate grievances and criticize the conduct of the executive. Even the right of independent legislation was claimed. This was a healthy development. Even Lord Dalhousie was happy over the role assumed by the Legislative Council. But the working of the Legislative Council was quite contrary to the intentions of the authorities in England. Sir Charles Wood, the President of the Board of Control, wrote, "I do not look upon it (Legislative Council), as some young Indians do, as the nucleus and beginning of a constitutional parliament in India."

1. Montford Report p. 81.

CHAPTER III

RUDE SHOCK AND TAKING OVER BY THE CROWN

At the time of relinquishing the Governor-Generalship of India in 1856, Lord Dalhousie is reported to have said that he was leaving a peaceful India for many years to come. Strange though it seems, this belief was shared by most of the Britishers in England and the bureaucracy in India. They thought that Indians were thoroughly satisfied and fully reconciled to their rule over India. This is why the Mutiny, when it occurred in 1857, came as a rude shock to the Europeans.

Dr. Pattabhi Sitaramayya has described the upheaval of 1857, as our 'First War of Independence'. The British Government, however, dubbed it as a Mutiny—a mere sepoy rebellion, i.e., a revolt of a small section of the soldiery. It was a violent struggle conducted by some Princes and soldiers of India with the common objective of overthrowing the British rule in India. At many places, even civilians took part in it. The area of its operations was fairly wide. The upheaval, therefore, possessed all the germs of a patriotic revolt.

Consequences of Mutiny : The Mutiny of 1857 had very serious repercussions on Indo-British relations and on the Indian administration. Firstly, it hastened the end of the East India Company. The Act of 1858 was passed, the Company was dissolved and the system of the Double Government introduced by the Pitt's India Act was given up, once for all. The Indian administration was taken up directly by the Crown.

Secondly, the famous Policy of associating Indians with the administration was implemented with the enactment of the Indian Councils Act of 1861. This was done to meet a very serious flaw in the Indian administration, namely, that there were no avenues for gauging the public opinion in India and to ascertain the reaction of Indians to the administrative policies and measures.

Thirdly, the Indian Army was reorganized in 1861 on the recommendation of the Peel Commission, which was appointed in 1858. The British element in the army was strengthened against the Indian personnel. The artillery was kept in the hands of Europeans. Moreover, the army was organized in such a manner that there were left little possibilities of soldiers belonging to different communities uniting or creating a common front against the British Government. The policy of "counter-poise of natives

against natives" was introduced in the army. The 'divisions' were reorganized on provincial and religious basis.

Fourthly, the policy of introducing European education and institutions was accelerated. This was done with a view to bring about the moral and intellectual conquest of the people, who had shown, during the Mutiny, that they had not taken kindly to European innovations and reforms. Intellectual conquest of the people was attempted on three fronts. The High Court Act, 1861 was passed to popularize the British system of justice. The Councils were created in 1861 to familiarise the people with the British parliamentary system. Universities were set up in 1858 to westernize the system of education.

Fifthly, upto 1857, the British Government had reposed at least some trust and confidence in Indians. This is clearly evident from the pre-Mutiny organization of the army as well as from the attitude of the European administrators towards Indians. After the Mutiny, all that trust and confidence vanished. The European officers in India, struck with fear, began to distrust Indians in every walk of life. Muslims were looked upon with suspicion even more than Hindus. The famous Declaration of Queen Victoria of 1858, wherein it was proclaimed that Indians would be appointed to higher posts irrespective of racial consideration, was not implemented in practice, because the Government no longer trusted Indians.

Lastly, the European officers in India stopped all social intercourse with Indians, who were no longer befriended by them or met as equals in social life. Before the Mutiny, these Officers mixed with Indians freely in social functions. After the Mutiny, a veil was drawn against the social life of Europeans. This was the cause of a good deal of racial hatred, which was a marked symptom of the Indo-British relations after the Mutiny. Blunt says, "Englishmen in India during the last 20 years have been the cause of half the bitter feelings there between race and race."

Lastly, during the Mutiny, the British Government realised the folly of not maintaining cordial relations with the Indian Princes. Their future friends in India, it was realized, could not be from the masses of young India, but would only come from the 'dominating element' in the country. It was for this reason that the Queen in her Declaration assured the Princes that the British Crown would regard their "rights, dignity and honour, as our own".

THE ACT OF 1858

In February 1858, Lord Palmerston introduced a bill for liquidating the Company and transferring the Government of India to the Crown. J. S. Mill, the famous individualist, who remained lifelong in the service of the East India House, drafted the famous petition for the retention of the East India Company. Lord Palmerston delivered a great speech in the House of Commons on

February 12, 1858, and very ably refuted the arguments advanced by the Company for its retention. Before, however, the Bill became an Act, Lord Palmerston had to resign. The passage of the "Act for the Better Government of India, 1858" was secured by the succeeding Government. *passing of a bill into a law*

Causes of Enactment: The immediate cause of this enactment was, of course, the Mutiny, but there were many defects in the system of Double Government and objections against the retention of the Company, which provided additional arguments to those who stood in favour of this Act. These were as follows :—

Firstly, it was argued that the political system of England was based on the principle that power was never divorced from responsibility. Whenever any organ of the constitution exercised any political power, it was made responsible for its proper use to a body of the elected representatives of the people. But here was a group of traders exercising political power over India without being accountable to any popular body for their actions.

Secondly, in the words of Bright, the system of Double Government was a case "of divided responsibility, of concealed responsibility and of no responsibility". The Board of Control, many a time, laid the blame on the shoulders of the Court of Directors, while the latter often complained that the Board of Control was squandering money on ambitious wars with the help of the revenue collected by the Company.

Thirdly, the system of checks and balances, checks and counterchecks made the Government slow and clumsy in its working and a considerable delay was caused in the disposal of its work. A despatch, before it was finally ready in London, had to move to and fro many a time between the Board of Control and the Court of Directors.

And lastly, the East India Company was no longer exercising any trading functions or effective political powers. The last vestige of monopoly in trade was taken away from it in 1833. There was no excuse left for retaining this anachronism. A trading corporation had no right to be entrusted with political functions.

Imp **Main Provisions:** The Act, in the first instance, transferred the Government of India from the Company to the Crown. India was, henceforth, to be governed directly in the name of the Crown. The East India Company was abolished.

Secondly, all the powers which were hitherto exercised by the Court of Directors and the Board of Control were transferred to the Secretary of State for India, who was to be one of the Cabinet Ministers. The salary of the Secretary of State and of his establishment was to be paid from the Indian revenues.

Thirdly, the Secretary of State for India was to be assisted by a Council, which was to consist of 15 members, of whom 8 were to

be appointed by the Crown and 7 were to be elected by the outgoing Directors. At least 9 out of these 15 Directors were required to be persons, who must have served in India for at least 10 years and must not have left India more than 10 years before the date of their appointment. The power of appointing 7 members given to the Directors was not to be exercised thereafter, because all future vacancies were to be filled in by the Crown. The members of the Council were also to draw salaries from the Indian revenues. They were to hold office during good behaviour and were removable only on the presentation of an address to the Crown by both Houses of the Parliament for that purpose. Their removal was thus like that of the High Court judges. This assured the Councillors permanency of tenure and independence of action. The Secretary of State was not given the power of appointing or removing them. The Council was to be presided over by the Secretary of State and was to act under his directions, which left all initiative with the Secretary of State.

Decisions were ordinarily to be taken by a majority vote ; but the Secretary of State was given the power to over-rule a majority decision of the Council in case he considered such a course necessary. The Secretary of State had a vote of his own and could also give a casting vote in case of a tie. The Secretary of State was to record his reasons in writing, when he went against a majority decision. Although the Secretary of State was given the power to override a majority of the Council, yet in some cases he was bound by the majority decisions, e.g., in deciding grants or appropriations of any part of the Indian revenues, in distributing patronage, in making contracts and raising loans on behalf of the Government of India, and while selling, purchasing or mortgaging the property of India. The Secretary of State was further given the power to send to and receive "secret" despatches from the Governor-General of India without bringing them to the knowledge of the members of the Council. He could also send 'urgent' despatches to India without taking the Council into confidence after recording reasons for such urgency. The Secretary of State in Council was to frame new rules for regulating the Indian Civil Service examination, which was thrown open to all. The Secretary of State-in-Council was given a corporate status, making it capable of suing and being sued in India and in England.

Finally, the Secretary of State for India was required to lay "before both the Houses of Parliament an account for the financial year, containing a statement of the revenues and expenditure of India and also containing a statement showing the moral and material progress made by India in that year." The entire administration of India came thus under the discussion of the Parliament every year, when such a report was presented to the Parliament.

Need for the Indian Council : With the abolition of the East India Company in 1858, a gap was left between the authorities

in England and in India. The Secretary of State was not expected to possess first-hand knowledge of Indian affairs. Hence, it was thought necessary to associate with him a body of persons, who should possess ample knowledge about India and should have experience of the Indian administration. Moreover, it was feared that if the Secretary of State was left unhampered to deal with the Indian administration as he pleased, he might become autocratic and beyond the control of the Parliament, which possessed only a scanty knowledge about the Indian conditions. Hence, the Council was expected to act as a limited constitutional restraint on the Secretary of State. Besides, India was being actually ruled from top to bottom by a foreign bureaucracy, which was in no way responsible to the people of the land. A body of persons acquainted with Indian affairs was considered necessary to control the activities of the bureaucracy in India in the interest of the purity of the administration.

Status of the India Council : The India Council, as created in 1858, was given a subordinate though not a secondary position to the Secretary of State. It was a semi-independent body. Its members were permanent officials, appointed during good behaviour, who were expected not to sacrifice their convictions to exigencies of party politics. Its members were neither appointed nor removable by the Secretary of State. A majority decision of its members, in some important matters, was even binding on the Secretary of State. The India Council was, however, clearly at a disadvantage in certain respects as against the Secretary of State. The Secretary of State had the backing of the Cabinet and the House of Commons. All initiative rested with him. The Councillors could be ignored when the Secretary of State chose to mark a despatch as 'urgent' or 'secret'.

Defects of the Council : The independent status and statutory powers enjoyed by the Council were inconsistent with the general responsibility of the Secretary of State for the Indian administration to the Parliament. The Council was not responsible to the Secretary of State. It was a body of persons who enjoyed executive powers without responsibility. This created an awkward situation for the Secretary of State. The status given to the Council was also inconsistent with the sovereignty of the Parliament. In a democratic set-up such a body must play a secondary role to the parliamentary chief. The inevitable followed. In later years, the India Council was made almost entirely subservient to the Secretary of State.

Evaluation of the Act : ~~Calverley~~ The Act of 1858 did not make any material difference as far as the actual power of the Cabinet over the Indian affairs was concerned. By 1858, the British Government had already acquired almost complete control over the Indian administration and the Directors had been reduced to a nullity. The Act only removed some of the 'contradictions, fictions and myths'

created by the Pitt's India Act. Lord Derby, who was the Prime Minister of England, when the Act was passed said, in the House of Lords on July 15, 1858, "I may add, that, in point of fact the transference of authority to the Crown is *more nominal than real*, because, although the Court of Directors have been in a position to exercise certain powers of obstruction and delay, I believe that with the single exception of the power of recalling the Governor-General, there was no single act which they were enabled to perform without the assent of the President of the Board of Control. Not only does the President of the Board of Control possess the power of altering or of vetoing the instructions proposed by the Court of Directors, but he has power, and it has sometime been used, of sending out instructions diametrically opposed to those, which the Court intended". The Earl of Ellenborough, who on various occasions had been at the head of the Board of Control, said that "when he was in office the Government of India was in his hands altogether". The legal and formal implications of the Act were, however, considerable. No more was heard, thereafter, of the East India Company, its Directors and shareholders. The British Government became, in fact as well as in law, the sole director of the course of the Indian administration.

Queen Victoria's Proclamation: The various changes introduced by the Act were formally announced in India by a Proclamation of Queen Victoria on November 1, 1858. The Queen declared, "We hereby announce to the native Princes of India, that all treaties and engagements made with them by or under the authority of the Hon'ble East India Company are by us accepted and will be scrupulously maintained. We shall respect the rights, dignity and honour of native Princes as our own". This was announced to placate the Princes, some of whom had risen in rebellion during the Mutiny. The idea was to make them act as a bulwark of reaction against progressive forces which had reared their head during 1857.

The Queen also proclaimed, "It is our further will, that as far as may be our subjects of whatever race or creed be freely and impartially admitted to offices in our service, the duties of which they may be qualified by their education, ability and integrity duly to discharge". This was stated to meet the complaint, that a similar Declaration of 1833 had not been carried out in practice at all. It may be added that even this repeated pledge remained only a pious thought for a quarter of a century more. Non-interference in religious matters was also once again assured in the Declaration, in view of objections to the activities of some Christian missionaries and the help they received from some of the European officers. Due regard, it was stated, would be paid to the ancient rights, usages and customs of India. Promise was also made "to stimulate peaceful industry of India, to promote works of public utility and improvement and to administer its government for the benefit of all of the subjects resident therein".

gave you

PART II

BENEVOLENT DESPOTISM AND THE NATIONAL DEMAND

CHAPTER IV

THE POLICY OF ASSOCIATION

INDIAN COUNCILS ACT, 1861

The Indian Councils Act of 1861 is an important landmark in the constitutional history of India. Under this Act Indians were nominated for the first time as members of the Executive Councils, while meeting for legislative purposes. This is sometimes described as the Policy of Association i. e., associating Indians with the administration. It is also called the Policy of 'benevolent despotism'. 'Despotism', because the Government remained irresponsible as before. 'Benevolent', because Indians were allowed to be associated with the administration of their country.

Causes of the Enactment: The first and the foremost reason, for the initiation of this policy, was the realization on the part of the British Government after the Mutiny that it was a great mistake on their part not to provide institutions, through which, they should be in a position to know what the Indians thought about their rule. The first Indian of eminence, who impressed this idea on the Government, was Sir Syed Ahmad. Sir Bartle Frere, a member of the Executive Council of the Governor-General, wrote in 1861, "The addition of the native element, (to the Councils) has, I think, become necessary," unless one is, "prepared for the perilous experiment of continuing to legislate for millions of people with few means of knowing, except by a rebellion, whether the laws suit them or not."¹ "The terrible events of the Mutiny brought home to Englishmen's mind the dangers arising from the entire exclusion of Indians from association with the legislation of the country."²

Moreover, it was becoming difficult even for the Supreme Legislative Council to legislate for all the Provinces. The central body was far too ignorant of the local conditions to be able to legislate

1. Montford Report, p. 31.

2. Ibid, p. 31.

29
social inferior
revolution
position
different

for them ably and effectively. This defect was partly removed in 1853, when one representative of each Provincial Government was made a member of the Council for legislative purposes. But this step was hardly adequate. The Provinces were also not satisfied with the meagre share they were given in making laws about their territories. Without the help and advice of Indians it was no easy job to make laws covering diverse Indian conditions, customs and traditions.

(Besides, the Legislative Council had become, in actual working, a sort of a 'petty Parliament'. It had begun to adopt parliamentary functions and procedure. This development was against the intentions of the British Government, who only wanted to create a distinct law-making body, apart from the Executive Council to give expert advice to the Executive at the time of law-making. In the Act of 1861, an attempt was made to restrict the activities of the Legislative Councils.

Main Provisions : In the first instance, the Act added some additional members to the Supreme Council for purposes of legislation. These additional members were to be not less than six, nor more than twelve. They were to be nominated by the Governor-General for two years. Not less than one-half of these members were required to be non-officials. Indians were, invariably, nominated to fill these non-official seats. Moreover, the function of the Supreme Legislative Council was "strictly limited to legislation". It was specifically forbidden to do anything with the object of controlling the Executive. The powers of asking questions or moving resolutions or discussing the budget were expressly disallowed. Governor-General's assent was made necessary for every Act. He could reserve any bill for the approval of His Majesty's Government, who could disallow a bill even previously approved by the Governor-General.

(2) Secondly, in 1833, the power of legislation had been taken away from Bombay and Madras. Under this act, the law-making power was restored to these Presidencies. The Executive Councils of these Presidencies were also expanded for purposes of legislation, by the addition of the Advocate-General of the Province and some additional members. These additional members were to be not less than four, nor more than eight, out of which not less than one half were required to be non-officials, who were invariably Indians. The powers of the Provincial Councils, when meeting for legislative purposes, were also restricted to legislation only, like that of the Supreme Council. For every law passed by a Provincial Council, the assent not only of the Governor of the Province, but also that of the Governor-General was required. The Governor-General was further empowered to create similar bodies for North-Western Frontier Province and the Punjab, which were formed in 1886 and 1897 respectively. Power was also given to the Governor-General-in-Council to create new Provinces, to appoint Lieutenant-Governors for them and to demarcate the boundaries of the Provinces.

Thirdly, upto 1861 there were only four members of the Governor-General's Executive Council, besides the Governor-General and the Commander-in-Chief, who was an extra-ordinary member. Under the Act of 1861, a fifth member was added. The Commander-in-Chief remained an extra-ordinary member. The Governor-General was authorised to appoint a President of the Council for taking the chair in his absence. The Governor-General was also given the power to frame rules and regulations for transacting the business of the Council. Under these rules, the portfolio system was introduced, which became a permanent feature of the Indian administration.

Lastly, during the Mutiny a need was felt for giving emergency powers to the Executive. The Act of 1861 gave the Governor-General the power to issue Ordinances during an emergency, which were to be valid for six months, unless superseded earlier by the Secretary of State-in-Council or by the Supreme Legislative Council.

Evaluation of the Act : Indians were, no doubt, included in the Councils to reflect public opinion. But, very soon, it became evident that the Councils had failed to serve the purpose for which they were expanded. Mostly, the Indian Princes or their Diwans or big zamindars and capitalists were nominated, who did not take their work seriously. Moreover, the opinion represented by them was hardly 'public' opinion, which the Government was keen to ascertain. They were not the real representatives of the people.

In actual workings, the real function of these Councils turned out to be merely to register the decrees of the executive side of the Government and to stamp them with the legislative seal. They were no better than subordinate committees for purposes of making laws. They were hardly in a position to influence the Executive. The method of nomination employed for non-official members was resented by the progressive opinion in India. Very soon, it became evident that the national leaders of India were not satisfied with the role allotted to these Councils and the Government also did not find them serving the purpose for which they were intended. In a way, the step taken was a reactionary one, because the function of the Legislative Councils was restricted to mere legislation. Under the Act of 1853, the Legislative Council had quietly assumed a Parliamentary role.

Cowell describes the role of these Councils as follows : "The character of the legislative council established by the Act of 1861 is simply this : that they are committees for the purpose of making laws—committees by means of which the executive government obtains advice and assistance in their legislation, and the public derives the advantage of full publicity being ensured at every stage of the law-making process. Although the government enacts the laws through its Council, yet the public has the right to make

itself heard and the Executive is bound to defend its legislation. And when the laws are once made, the Executive is as much bound by them as the public, and the duty of enforcing them belongs to the courts of justice.' In later years, there has been growing deference to the opinions of important classes, even when they conflict with the conclusions of the government, and such conclusions are often modified to meet the wishes of the non-official members. Still it would not be wrong to describe the laws made in the legislative councils as in reality the orders of the government ;.....The Councils are not deliberative bodies with respect to any subject but that of the immediate legislation before them. They cannot enquire into grievances, call for information, or examine the conduct of the Executive. The Acts of administration cannot be impugned, nor can they be properly defended in such assemblies, except with reference to the particular measure under discussion."¹

1. Quoted in Montford Report, p. 33.

CHAPTER V

BIRTH AND EARLY PHASE OF THE NATIONAL MOVEMENT (1885-1905)

The ultimate aim of nationalism is to lift a nation economically, socially and politically. In a subject country nationalism becomes synonymous with patriotism and its immediate objective is the achievement of national sovereignty or independence, because a foreign rule is usually the biggest hurdle in the way of the advancement of a subject country.

Aim of Indian nationalism : The ideal before Indian nationalism was the progress of the people of India. But as India was under the rule of the British and that rule was the biggest obstacle in the way of the advancement of her people, the primary aim of Indian nationalism became the achievement of independence. Such an achievement is impossible without unity amongst the people. Hence one of the main objectives before Indian nationalism has been to foster a sense of unity and *comradarie* amongst the various communities living in India. While concentrating on the achievement of unity and independence as its immediate objectives, Indian nationalism also tried to uplift the people in every possible sphere.

Basis of Unity in India : It is often said that India is not one nation but a continent composed of various nationalities, tribes, castes and clans, differing in language, race, religion, custom and culture. It is impossible to deny social diversity in India. But such diversities exist even in the most advanced countries of the world. In U.S.A. there are many races; in Russia many religions and in Switzerland at least four official languages and yet all these countries have been able to develop a common nationality. This is because there were other things common amongst the citizens of those countries. In India also, there is a sufficient quantum of basic unity to weld the people into a harmonious and organic whole. In this connection Dr. Pattabhi writes, "What we find in India is that the different refinements of culture belonging to the various people had been harmonised, in the course of time into a grand oneness. From the Himalayas to Cape Comorin and from Dwarka to Sylhet, there was one culture, one religion and philosophy, the same scriptures and varnashrama, the same manners and customs, common civic institutions and social laws and a common historical tradition."¹ And yet Indians could not achieve unity. This was primarily

1. Dr. Sitaramayya : History of National Movement in India : Introduction.

because of the activities of the British rulers, who encouraged divisions and dissensions amongst the Indian people to perpetuate their own rule.

National movement and the Indian National Congress : It is sometimes said that the history of the Indian National Congress is the history of Indian nationalism. The statement is not wholly true. From 1907 to 1916, the Extremists remained aloof from the Congress, but they were very much a part of the national movement. In 1918, the Moderates left the Congress, but they also continued to work in their own humble way to strengthen the national forces. It is, however, right to admit that the Indian National Congress was the most organised, effective and formidable expression of the patriotic will of India. The history of Indian National Congress substantially covers the major portion of the history of the Indian nationalism.

Causes of the growth of the Indian national movement : During the Mutiny the earliest rays of the national movement are traceable. Nationalism was quite weak in 1857. For about 28 years more, it was not successful in finding a regular expression. The national movement really began in 1885 with the birth of the Indian National Congress. Below are given some of the immediate as well as the remote causes which were responsible for the birth of the Indian national movement.

(i) Socio-religious movements of the 18th and 19th centuries : The soil for the growth of Indian nationalism was prepared by the socio-religious movements of the 18th and 19th centuries. Among these, the names of the Brahmo Samaj, the Arya Samaj, the Ramakrishna Mission and the Theosophical Society may be prominently mentioned. Raja Ram Mohan Roy, who founded the Brahmo Samaj in 1828, is often called the Prophet of Indian nationalism. He is also remembered as the Father of the Indian Renaissance or the Modern Age in India. He was mostly responsible for the rejuvenation of the Indian society. Swami Dayananda, the founder of the Arya Samaj, was another saviour of the Hindu society. He saved Hinduism from the onslaughts of Islam and Christianity by pointing out the superiority of the Hindu religion and the sterling worth of the Hindu scriptures like the Vedas. The germs of the cult of Swadeshi can be traced to his teachings. Swami Ramakrishna Paramhansa and his great disciple Swami Vivekananda also contributed a good deal to the revival of Hinduism. Mrs. Annie Besant, the President of the Theosophical Society, adopted Hinduism and regarded it as better than all other religions.

These socio-religious movements and their leaders breathed new life into the degenerated Hindu society of their times. On the one hand, they attacked social and religious evils which were eating into the very vitals of the Hindu society and brought about many reforms. On the other, they unfolded before the Hindus, the

pictures of their glorious past, ancient civilization and hoary culture. The Hindus began to realise their ancient greatness and became self-conscious. With self-consciousness came the sense of self-respect, which in its train brought dissatisfaction against the British rule. Indians began to realize the evils of their subjection. Freedom began to be considered necessary even for the achievement of social and religious reforms. These movements preached love for India, Indians and things Indian.

(ii) **Western Education** : Macaulay was mostly responsible for introducing the new educational policy in India. His object was to train and bring up Indians in the Western manner and method and to bring the two peoples—British and Indian, socially, culturally and politically near. Macaulay was also thinking in some other direction. In 1833 he said, "It would be the proudest day in English history, when having become instructed in European knowledge, they (Indians) shall demand European institutions". It may be mooted whether this was the real objective of Macaulay, but none can deny that the first demand for self-governing institutions in India came from those who had acquired the Western education.

The result of this education policy was disastrous for some of the Indians. They began to ape every thing Western. They became slaves of foreign fabrics and fashions. They lost faith in their heritage, culture and themselves. They became, therefore, in a way, willing tools of the British Imperialism. But all the same, the English language proved a blessing in disguise for Indians in many ways. Through the vehicle of the English language, the vast English literature, which is full of democratic ideas and freedom-songs became accessible to Indians. It infused in them a new love for liberty and freedom. Ideas of Milton, Burke, Mill, Macaulay, Herbert Spencer and many others were made available to them.

It enabled Indians to go abroad and to live among Englishmen and other Western nations. When Indians went abroad, they saw the way in which free men of the world lived. They also studied for themselves the working of democratic political institutions. When these young men returned to India, the life here proved simply suffocating and revolting to them. Again, the English language served as a 'lingua franca' i.e., as the common all-India language. It was through the medium of the English language that seventy-two educated Indians from every nook and corner of the country, could exchange their ideas in 1885 in Bombay for the first time in the history of the country, with the set purpose of evolving a national organisation for the country as a whole. For the first fifteen years or so the national movement was confined to those who had learnt and mastered the English language and were brought up essentially in the Western style.

(iii) **Conditions created by the British Rule** : The British Rule was instrumental in the growth of nationalism in another

manner. The vast net-work of communications and transportation, built by the British, made it possible for Indians to come together and to communicate to one another and to discuss the deficiencies and evils of the British rule. No doubt, the Britishers built the system of railways, roads, posts and telegraphs in India in order to enable themselves to administer the country efficiently ; but these instruments also enabled "all earnest labourers in the national cause to become personally known to each other and to discuss and to decide upon the political question", by making it possible for them to meet and communicate themselves even from far off places. It was for the first time in history that India was administered as a single unit. Nothing was more helpful in impressing upon the leaders and the masses of India a sense of unity amongst them.

(iv) **Repressive policy of Lord Lytton:** Lord Lytton was the Governor-General of India from 1876 to 1880. Throughout these four years, he followed a very repressive policy. The Arms Act was passed, which was an attempt to demilitarise Indians and to forbid them to carry and use arms. The discrimination made between Indians and Europeans in the application of this Act was simply appalling to the mind of Indians and created racial ill-feelings between the two communities.

Lord Lytton's Government also enacted the Vernacular Press Act, whose object was to strangle the free voice of the Vernacular Press, which had by then become sufficiently powerful and vocal to get on the nerves of the British bureaucracy. When Lord Lytton arrived in India, he found the Vernacular Press very critical of the Government. He armed himself against the Press with extraordinary powers through this Act, which was often described as the "Gagging Act". Lord Lytton ordered the discontinuation of the cotton import duty in order to placate the Lancashire manufacturers of cloth. He was able to do so by the exercise of his veto-power and by over-ruling a majority decision of his Executive Councillors, who were themselves Europeans. This was the first and the only time when this extraordinary power was actually used by a Governor-General in India.

During the administration of Lord Lytton a famine raged in the country. It was sheer callousness that an Imperial Darbar should be held in India at a time when lakhs of Indians were dying of hunger and privation. Lord Lytton also started the Kabul invasion, which was followed by the second Afghan War. It was clearly realized by Indians that these wars were being fought for Imperialistic purposes, in order to extend and consolidate the British Empire in India. It was doubly resented, because poor India had also to pay for these wars.

The repressive policy of Lord Lytton, detailed above, sowed the seeds of discontent and resentment everywhere. Indians began to devise ways and means for the ending of such a rule. Many

associations were started in the various parts of India to give expression to the prevailing resentment. In the Deccan, very serious agrarian anti-tax riots started with a view to registering a protest against the manner in which the Indian money was squandered by Lord Lytton. Sir William Wedderburn told Blunt, "The state of things at the end of Lord Lytton's reign was bordering upon revolution."

(v) **Denial of higher jobs to Indians :** In the Act of 1833, it was stated that the higher jobs in India would be given to all, irrespective of any distinction of race, caste, colour and creed. In 1858, this assurance was repeated by Queen Victoria. But this policy was seldom followed in practice ; rather, deliberate attempts were made to shut out Indians from the higher posts. After 1857, the Mutiny provided a sufficient excuse to keep Indians out of the higher jobs. Thus the policy enunciated in 1833 and 1858 regarding the employment of Indians to higher jobs was mostly honoured in its breach.

Systematic attempt was made to keep Indians especially out of the Indian Civil Service. Two cases will illustrate the point. Surendra Nath Banerji passed the I. C. S. examination in 1869, which was held only in England at that time. The age of entrance was 21 years. It is easy enough to see how difficult it was under those conditions for Indians to compete for the examination in such a far off place and at such a tender age. The medium of examination was evidently English, which was a further handicap in the way of Indians. Mr. Banerji bravely overcame all those hurdles and passed the I.C.S. examination. But he was not taken into the Service because of a discrepancy in age and his name was removed from the list of the successful candidates. Mr. Banerji preferred a writ of *mandamus* to the Queen's Bench, which admitted the righteousness of Banerji's contention and he was ordered to be admitted into the Service. He had hardly been in service for two years, when a case was started against him, as the result of which he was removed. Aravinda Ghosh also came out successful in the main examination, but was disqualified in the riding test. In 1877 the age of entrance to the I. C. S. examination was reduced from 21 years to 19 years, and thus it was made almost impossible for any Indian to go to England and compete for the examination.

To canalise the resentment of Indians over these issues Mr. Banerji founded the Indian Association in 1876, which was to be the centre of all such all-India activities. He also proceeded on an all-India tour to agitate and protest against these wrongs. He received most enthusiastic response from every where. Rightly, therefore, he is called the 'Father of the Indian Unrest.' As a result of this campaign, an all-India Memorial was addressed to the House of Commons, wherein it was demanded that the age of entrance should be raised back to 21 years and that the I. C. S.

examination should be held also in India simultaneously. Moreover, it was decided to send a deputation to England to put the grievances of Indians before the British public and authorities in such matters. Mr. Lal Mohan Ghosh was sent to England, who ably placed the Indian view-point before the British authorities.

(vi) **Economic exploitation of India :** In the Charter of 1813 it was declared, "It is the duty of this country to promote the interests and happiness of the native inhabitants of the British Dominion in India". It was added in 1833 that it was "an indisputable principle that the interests of the native subjects are to be consulted in preference to those of the English, whenever the two came in competition." Similar high sounding intentions were expressed in Queen Victoria's proclamation of 1858. But the economic policy followed by the British government regarding India was such that it led directly to the impoverishment of the country. The entire administration was top-heavy and costly. Systematic attempts were made to destroy the once-famous indigenous industries of India to make room for manufactured articles from England. Lancashire was placated in 1877 by dropping the cotton import duty—a step which was clearly detrimental to the infant Indian textile industry. Encouragement to the Indian industry was out of question; rather, deliberate attempts were made to throttle it by following the policy of free trade. Such a policy was bound to prove ruinous to the industry of a backward country like India. The Government was evidently preparing India to be an agricultural country for providing England with raw materials and to serve as a market for her finished goods. The standard of agriculture was also allowed to deteriorate. Very little effort was made to introduce modern methods of agriculture.

(vii) **The work of the Press in India :** By the eighties of the 19th century the Press in India had become very powerful. By 1877, there were 644 newspapers in India, most of them Vernacular. The Vernacular Press Act of Lord Lytton was a deliberate attempt to gag the Vernacular press and thus "to smother the rising flame of discontent, by blocking the chimney."¹ It was later withdrawn. The Press in India proved a great force, through which Indian nationalism derived its vigour and strength. It helped to make public the grievances of Indians and to expose the failings and deficiencies of the alien rule. It brought home to Indians that the main hurdle in the way of India's uplift was her slavery and that some sort of political organization to work for freedom was absolutely essential.

(viii) **Ilbert Bill controversy :** Sir C. P. Ilbert was the Law Member of the Executive Council of Lord Ripon. Sir Ilbert introduced a Bill, the object of which was to remove some of the disqualifications from which the Indian magistrates suffered, while

1. Zacharias : *Renascent India*, p. 103.

Enactment of a Bill into Law

trying Europeans. This was against the basic principles of the Rule of Law, which the English were so proud for having introduced in India. The Bill advocated a right cause and was sponsored by a European Law Member. Yet, it was made the object of such an unprecedented agitation by the Europeans and Anglo-Indians, as was never witnessed before in this country. The European community in India rose to a man to oppose the enactment of this Bill. It was seriously argued that the Indian judges were not fit to administer justice to a White man, even when he was a criminal. The European Defence Association was formed by the opponents of the Bill, with branches in all important centres of India to carry on agitation against the Bill. Rs. 150,000 were collected to fight for the retention of the class privileges, which the White men enjoyed in India in the administration of the criminal justice.

This agitation was an eye-opener for Indians, who became convinced that they would continue to be humiliated and insulted so long as they were not free. It was a poor little bill, just and equitable; yet the Government of India had to bow before the storm of agitation and they withdrew the proposed legislation. It is said that it was in answer to the European Defence Association that S. N. Banerji took up the idea of calling a national convention in 1883, which was the forerunner of the Indian National Congress.

Birth of the Indian National Congress: It is rather difficult to trace the origin of the Congress. Origins are generally obscure; more so of a social movement. The resentment, which was piling up against the government, for reasons detailed above began to express itself in the form of various Provincial associations in the Presidency towns. The credit for starting the first all-India association goes to S. N. Banerji. He started the Indian Association in 1876 to make it the centre of all agitations of an all-India nature. This association was called Indian to emphasise its all-India and national character, as distinguished from Provincial or regional associations, started hitherto. The immediate spark and inspiration for the starting of the Indian Association was provided by the resentment over the formation of the European Defence Association, whose object was to oppose the well-meant Ilbert Bill. A national fund was also started to finance such a movement, as a counter-blast to Rs. 150,000 collected by the European Defence Association.

The credit for starting the Indian National Congress is often given to Mr. A. O. Hume, who was a retired Civilian from Poona and who is often called the "Father of the Indian National Congress". In 1883, Mr. A. O. Hume called a National Conference. In the same year, he addressed an open letter to the graduates of the Calcutta University and asked for fifty young men, good and true, with whom to begin a national organization for uplifting the country. In this famous letter he gave expression to noble and stirring sentiments, calling upon youngmen to offer themselves for service of their fellow country men. In a circular issued over the

joint signatures of A.O. Hume and S.N. Banerji, a Conference was called. Its object was stated to be, "Directly to enable all earnest labourers in the national cause to become personally known to each other, to discuss and to decide upon the political operation to be undertaken during the ensuing year, and thus indirectly this conference would form the germs of a native parliament, and if properly conducted, will in a few years constitute an unanswerable reply to the assertion that India is unfit for any representative institutions".

It may be stated that A.O. Hume got full support for his idea of starting such an association from government authorities, both in India as well as in England. Lord Dufferin, who succeeded Lord Ripon as the Governor-General of India, told Hume that "He found the greatest difficulty in ascertaining the real wishes of the people and that it would be a public benefit if there was established some responsible organization, through which government may be kept informed regarding the best public opinion". Hume got a similar appreciation of his efforts in England, when he visited that country immediately before the first session of the Congress. It must be admitted that this official support proved very helpful to the Congress during its infant years.

National character of the Congress : The Indian National Congress, started in 1885, was meant to be a national organization of an all-India character. Its aim was to represent all Indians, without any distinction of caste, community, colour or sex. Mahatma Gandhi, at the time of the second Round Table Conference expresses the national character of the Congress thus, "It is, what it means, national. It represents no particular class, no particular interests. It claims to represent all Indian interests and classes. It was conceived in an Englishman's brain Allan Octavian Hume, whom we knew as the Father of the Congress : it was nursed by two great Parsies—Pherozeshah Mehta and Dadabhai Naoroji. From the very commencement, the Congress had Musalmans, Christians, Anglo-Indians, I might say all religions, sects, creeds—have been represented upon it more or less fully. The late Badruddin Tyabji identified himself with the Congress, we have had Musalmans as President of the Congress, and Parsis too. We have had women as our President. Dr. Annie Besant was the first and Mrs. Sarojini Naidu followed. Thus it is national in every sense of the term".

No doubt, most of the members of the Congress were Hindus and so were its office-holders. This was partly so because of the preponderance of the Hindus in the Indian population. The number of Muslims on its rolls was proportionately less partly because of the efforts of men like Sir Syed Ahmed, who wanted to keep Muslims out of it. But the history of the Congress, its never-ending efforts to win over those who kept aloof from it, its service in the national cause, vindicate and uphold its national character.

First session of the Congress : The first session of the Congress was scheduled to be held at Poona in 1885, but because of

the outbreak of cholera in that city its venue was shifted to Bombay. This session was presided over by Shri Womesh Chandra Bonnerjea, who laid down the following four objects before the Congress in his Presidential Address :

1. "The promotion of personal intimacy and friendship amongst all the more earnest workers in our country's cause in the various parts of the Empire.

2. The eradication by direct friendly personal inter-course, of all possible race, creed, or provincial prejudices amongst all lovers of the country and the fuller development and consolidation of those sentiments of national unity that took their origin in our beloved Lord Ripon's ever-memorable reign.

3. The authoritative record, after this has been carefully elicited by the fullest discussion of the matured opinions, of the most important and pressing social questions of the day.

4. The determination of the lines upon and methods by which during the next twelve months it is desirable for native (Indian) politicians to labour in the public interests."

This meeting was an epoch-making event. It was attended by only 72 delegates from various parts of India. It will not be wrong to say that, neither those who started it, nor those in the government who blessed it, ever thought that this organisation would gather momentum, so soon and so quickly, and that after 34 years would it stand up and challenge the British Government and after 62 years will become the successor of His Majesty's Government in India.

Some aspects of the early years of the Congress : During the early years, the Congress attracted almost all the famous personalities of India from all parts of the country, from every walk of life and from all communities, except Sir Syed Ahmed, who kept deliberately aloof. Names of Dadabhai Naoroji, Sir Pherozeshah Mehta, Sir Dinshaw Wacha, Ranade, Telang, Tyabji, Tilak, Gokhale, Banerji, Anand Mohan Bose, Moti Lal, Rash Behari Ghosh, Bonnerjea, Pal, Aravinda Ghosh, Lajpat Rai, Madan Mohan Malvia, Subramania Iyer, Sir Sankaran Nair, A. O. Hume, Wedderburn, Yule and Norton, deserve prominent mention.

The popularity of the Congress grew from year to year. In 1885 the Congress was attended by 72 delegates. In 1886 the number increased to 406. In 1887, it attracted 600 persons and in 1888 the number of delegates increased to 1248. In the subsequent years, its popularity continued to increase even at a greater pace and, by the time we reach the year 1906, it could claim to speak for a major portion of the intelligentsia of the country.

But in the beginning it was not a movement of the masses. It represented and claimed to speak only for the intelligentsia of the Indian society. It was not even a middle-class movement. With the exception of Lokmanya Tilak and possibly a few others,

most of its leaders were out of touch with the masses. At the Poona session of the Congress held in 1895, Sir S. N. Banerji, who presided over its deliberations, said, "We should be satisfied if we obtain representative institutions of the modified character for the educated community." He also said that he was not aware of any responsible Congressman, who had ever asked for representative institutions for the masses.

Change in the attitude of the Government towards the Congress : We have already noted that the Government had, in the beginning, welcomed the idea of the formation of the Congress and had even encouraged and helped it. During its first session, i. e., in 1885, even the desirability of Lord Reay, the Governor of Bombay, presiding over its first session was discussed. At the second Congress held at Calcutta, the Governor of the place invited the delegates to a garden party at the Government House. The delegates to the third session of the Congress, which was held at Madras in 1887, were similarly honoured by the Madras Government.

But this attitude of friendly neutrality which government had followed so far towards the Congress soon gave place to an attitude of suspicion, intolerance and even of open hostility. In November 1887 Lord Dufferin ridiculed the Congress as representing a "microscopic minority of the people" and misrepresented its aim. By the time we reach its fourth session, which was held at Allahabad in 1888, the attitude of the government changed to that of complete hostility. This was but natural. In the first two years of its existence the Congress had contented itself by passing mere paper resolutions. Dissatisfied with the attitude of the government in 1887 Mr. Hume started, along with the other Congress leaders, a campaign of agitation among the masses against the various acts of omission and commission of the Government by means of public meetings, pamphlets and leaflets on the model of the agitation conducted by some Englishmen against the Corn Laws in England. This led the Government to reverse its policy towards the Congress. To weaken the progressive forces still further the Government adopted the policy of divide and rule and encouraged Muslims to form some anti-Congress organisation to counter-balance the activities of the Congress.

Administrative Reforms demanded by the Congress from 1885 to 1905 : During its first session held at Bombay in 1885, the Indian National Congress requested the British Government to introduce reforms in the Indian administrative system, which were (a) reduction in expenditure on the military ; (b) abolition of the India Council ; (c) holding of the Indian Civil Service Examination in India simultaneously with England ; and (d) reform and expansion of the Legislative Councils set up in 1861.

From 1886 to 1905 some more demands were added, namely : (i) separation of judiciary from executive ; (ii) establishment of

military colleges in India ; (iii) reduction in salt duty ; (iv) promotion of temperance ; (v) decrease in the land revenue with a view to lessen its burden on the tillers of the soil ; (vi) change in tenancy laws to help the peasants against the landlords ; (vii) establishment of technical and industrial educational institutions in the country ; (viii) reduction in home charges ; (ix) repeal of cotton excise duty ; (x) safeguarding the conditions of Indians abroad ; (xi) removal of restrictions on the press ; (xii) protective tariff for infant industries ; (xiii) opening of agricultural banks to provide easy loans to the agriculturists and thus to save them from exploitation at the hands of the village money-lenders ; (xiv) repeal of various repressive laws, which curtailed the liberty of the people ; (xv) extension of irrigation works ; (xvi) revival of old industries and starting of new ones ; (xvii) more power for local bodies and lessening of the official interference in their work ; (xviii) appointment of Indians to higher posts ; and (xix) an inquiry into the economic condition of the people with a view to solve the problem of poverty and hunger.

A glance at the reforms asked for by the Congress will make it clear that the Congress, during these years, acted as a spokesman of every interest and section of the population. It showed concern for the welfare of labourers and peasants. It supported the demands of industry and capitalist classes. It wanted to improve the lot of Indians abroad. It stood for safeguarding the civil rights and liberties of the people. During its annual sessions a searching criticism of the administrative machinery of India was usually made from the nationalist point of view and request was made to the Government to set things right.

EARLY MODERATISM

During its early years, the Congress was entirely under the influence of the Moderates, who were guided by the following principles :—

(i) **Belief in gradual Reforms :** The Moderates believed in agitating for piece-meal reforms. They were content with simply urging reforms in the administration, e.g., in Councils, in Services, in Local Bodies, in Defence forces, etc. It was only in the year 1906 that Dadabhai Naoroji declared in his presidential address that "self-government or Swaraj like that of the United Kingdom or the Colonies was the objective before the Congress". Even in 1906 when Swaraj was laid down as the objective of the Congress, it was emphasised that self-government was claimed only under the aegis of the British Empire. It was also admitted that a considerable training period was necessary for achieving this ideal, although some of the Congress leaders believed that the probationary period was already over. "If we look at the early proceedings of the Congress, we are struck by the extreme moderation of its demands. The organisers and promoters of the Congress were

not idealists, who had built their habitation away on the horizon ; they were practical reformers imbued with the spirit, principles and methods of mid-Victorian Liberalism and bent on winning freedom by gradual stages, broadening from step to step. They, therefore, took scrupulous care not to pitch their demands too high. Some of them may have cherished in their heart of hearts full-fledged parliamentary self-government as a far-off ideal ; but all of them wanted to work on lines of the least resistance, and therefore framed their proposals of reforms on such moderate and cautious lines as not to arouse any serious opposition."¹

(ii) **Faith in Constitutional method :** The Moderates were confirmed believers in the efficacy of the constitutional method. They avoided conflict with the government at all cost. They eschewed violence. They followed the method of prayers, petitions, representations and deputations in order to convince the Government about the justice of their demands. This method is often nicknamed as the method of 'political mendicancy', i. e., the method of begging for political concessions. Revolutionary method was considered simply out of question, because it was then impossible to succeed and also because the Moderates were simply not prepared to pick up a quarrel with the Government.

(iii) **Faith in British sense of Justice and fair play :** Most of the early Congress leaders believed that the British people were essentially just and fair. According to them Englishmen were lovers of liberty and would certainly not grudge it to Indians, when they were convinced that Indians were fit for self-government. It was for this reason that from the earliest time the Congress was constantly doing its best to win the sympathy and support of the British public opinion. For that very purpose, a strong deputation of the Congress visited England in 1889. A journal called 'India' was also started in London in 1890 to place before the British public the view-point of Indians regarding the British administration.

(iv) **Regarded connection with the British for the good of India :** Most of the early Congress men were the product of Western civilisation and were imbued with Western thought. They honestly believed that the British had given Indians a progressive civilization. The English literature, the system of education, the system of transportation and communication, the system of justice and local bodies were some of the invaluable blessings of the British Raj. They believed that even when India became free, she was bound to keep some permanent ties with the British to India's own advantage.

Work and Weaknesses of the early Moderates : The Congress of early times is often criticised for its lack of vigour and effectiveness. No doubt, it was not in touch with the masses. Its leaders were mostly men of ideas and not of action. They believed in the method of prayers and petitions and not in the

1. R.G. Pradhan : India's Struggle for Swaraj, p. 24.

method of self-reliant and vigorous action. They were not prepared to make sacrifices. They took every possible care to avoid conflict with the Government. They worked only for piece-meal reforms and followed strictly constitutional methods.

But keeping in view the period under study and the conditions of those times, theirs was probably the only practical, sagacious and far-sighted method. They planted the sapling of freedom, watered it cautiously, but constantly and steadily, which in the fullness of time was bound to grow, as it has actually grown. They made an humble but correct beginning. We should not minimise therefore the stupendous work done by early Congressmen for the national cause. We should, in the words of Dr. Rash Behari Ghosh, have "some kindly thoughts for those who too, in their day, strove to do their duty, however imperfectly, through good report and through evil report; with it may be a somewhat chastened fervour, but a fervour as genuine as that which stirs and aspires younger hearts."¹

1. Annie Besant—How India wrought for Freedom, p. 475.

CHAPTER VI

INDIAN COUNCILS ACT, 1892

The Indian Councils Act of 1892 marks another step forward in the constitutional advancement of India. The Act was passed in furtherance of the Policy of Association started under the Act of 1861.

Causes of its enactment The Act of 1861 failed to satisfy the progressive opinion in the country, which wanted to see these Councils as instruments through which Indians could influence the decisions of the Government. In its very first session the Indian National Congress passed the following resolution: "That this Congress considers the reform and expansion of the Supreme and existing Provincial Legislative Councils by the admission of a considerable proportion of elected members (and the creation of similar Councils for the North-Western Provinces and Oudh, and also for the Punjab) essential; and holds that all Budgets should be referred to these Councils for consideration, their members being moreover empowered to interpellate the Executive in regard to all branches of the administration." Similar resolutions were adopted in later years.

Moreover, the Government of India, though hostile to the Congress since 1888, yet wanted to appoint more Indians on these Councils to increase its own power against the Home Government. The Government of India was sick of the dictatorial manner in which it was being treated by the authorities in London. In 1870 the Duke of Argyle, the Secretary of State for India, declared, "the Government in India had no independent power at all and that the prerogative of the Secretary of State was not limited to a veto of the measures passed in India.....the Government of India were merely executive officers of the Home Government, who hold the ultimate power of requiring the Governor-General to introduce a measure and of requiring also all the official members of the Council to vote for it." This is, sometimes, described as the *mandate theory*. The Government of India, thought that, with the help of the elected Indian members, they would be in a better position to face the Home Government and bring it to their own point of view.

Furthermore, the European business magnates working in India like the tea planters of Assam and the big businessmen of Bombay were also in favour of increasing the number of elected members and enlargement of the functions of these Councils in order to get representation for themselves on the law-making bodies of India for furthering their own economic interests.

In 1888 Lord Dufferin, the Governor-General, constituted a Committee to suggest further reforms in these Councils. Lord Dufferin favoured the introduction of the method of election for the Indian members. His proposals were sent to the Home Government and made an effective case for introducing the elective principle. But before anything could be decided, Lord Dufferin had to leave. His successor Lord Lansdowne gave full support to the views of Lord Dufferin.

Provisions of the Act : Firstly, the Executive Council of the Governor-General was expanded further for purposes of legislation with additional members, whose number was not to be less than ten, nor more than sixteen. In Bombay and Madras, these additional members were to be between eight and twenty. For Bengal the maximum number was also fixed as twenty. For North-Western Provinces and Oudh, the maximum number was fixed as fifteen.

Secondly, the Governor General was authorised to make rules, (subject to the previous approval of the Secretary of State-in-Council), for the nomination of these additional members. The rules which were actually made by the Governor-General under this provision, introduced a system of indirect election for the non-official members. Nominations were to be made on the recommendations of bodies like the Provincial Councils, Municipal Councils, District Boards, Chambers of Commerce, University Senates, etc. These recommendations were invariably accepted by the Governor-General. When the Act of 1892 was under consideration, two divergent views were expressed in the British Parliament. Firstly, there was a set of members in the Parliament, who were stoutly opposed to the principle of election. On the other hand, there were members, who believed that unless the principle of election was introduced, any further reforms of the Councils would be meaningless. As a result of these differences, a compromise formula was evolved, which introduced the indirect system of election, noted above. The clause in the Act, which entitled the Governor-General to "make regulations as to the conditions under which such nominations shall be made" and enabled indirect election to be introduced, is often known as the Kimberley Clause.

Thirdly, the functions of these Councils were considerably enlarged. Under the Act of 1861 it had been specifically stated that the functions of these Councils were purely legislative. Under the Act of 1892 some of the functions given to the Councils were meant to influence the Executive. These were in the nature of executive functions. The right of putting questions to the Executive Councillors and the right of discussing the Budget were conceded for the first time. Six days' previous notice was made necessary for every question. The President was given the power to disallow a question, without assigning any reason whatsoever for disallowance.

Fourthly, official majorities were maintained in the Supreme as well as in the Provincial Councils. "In the Supreme Council (out of sixteen additional members ten non-official members were admitted, besides the six official members. Four of these non-official seats were allotted to recommendations by the non-official members of the four Provincial Councils and one to the Calcutta Chamber of Commerce. Abandoning as hopeless the idea of securing the representatives of vast residuary areas and population of the country by any quasi-elective machinery, the Governor-General fell back for the filling of the five remaining non-official seats upon the process of nomination."¹ "The elective element in the Provincial Councils, for about fifteen years, consisted of at the utmost eight members."

Appraisal of the Councils set up in 1892 : The Councils, as set up in 1892, undoubtedly marked a decisive advance on the Councils installed in 1861. The number of Indians was increased. Indirect election was introduced in practice. The right of asking questions and discussing the Budget was tantamount to the right of the members to influence the working of the executive. These rights were parliamentary in nature. Because of these advances, it is believed that the policy of associating Indians with the administration *effectively* started. The foundations of responsible form of Government were really laid in 1892 and not in 1861. "The Indian Council Act of 1892 was an attempt at compromise between the official view of the Councils as pocket Legislatures and the educated Indian view of them as embryo Parliaments."² The fundamental departure now made was to introduce the system of indirect election and to give the Councils power of criticising and thus influencing the executive.

The Councils however failed to satisfy the progressive element in the country. Because of the growth of the Extremist element in the Congress, the national opinion became too radical to be satisfied with these Councils. The system of indirect election was considered inadequate, because it prevented any direct contact between the public and the representatives. There was no right of asking supplementary questions. There was no power to vote on the Budget as a whole or on the various items included in it. Sir Charles Aitchison once said, "As a mere arena of *ex post facto* debate, Councils were little else than mischievous."³ The functions entrusted to the Councils were hedged round by many limitations. The non-official members soon realised that they were hardly in position to make their voice felt in the decisions of the Government. Their criticism often proved futile. The Government usually ignored what they said. The official blocs worked as a compact bloc and could get passed all legislation which the Government wanted.

1. Montford Report, p. 36-37.

2. Pradhan : India's Struggle for Swaraj, p. 52.

3. Montford Report, p. 35.

CHAPTER VII

EXTREMIST MOVEMENT

In the last chapter, we have already noted that during its early years the Congress was completely under the influence of the Moderates, who believed in purely constitutional methods and agitated for piece-meal reforms in the Indian administrative system. But during these very years of the Congress, certain events happened in India and abroad and certain forces were at work, which produced among the younger element of the nation, a group of people who began seriously to question the wisdom of the method of prayers and petitions followed by the Moderates, in order to achieve their political objectives. These were the Extremists.

Causes of the growth of the Extremist movement : The following are some of the important causes responsible for the growth of the Extremist School of Politics in India :

(i) **Apathy of the Government to demands of the Congress :** The Act of 1892 was regarded by the Congress as inadequate for the purpose of giving Indians any effective voice in the administration of their own country. Hence the Congress continued to adopt, almost every year, resolutions urging the Government to enlarge the membership and functions of those Councils. But the Government was adamant in ignoring the demands of the Congress. This indifference of the Government to the demands of the Congress led many a youngmen seriously to question the efficacy of the purely constitutional method followed by the Moderates. They began to argue that the constitutional method had apparently failed and it was, therefore, necessary to give up the technique so far adopted by the Moderates.

(ii) **Hindu Revivalism :** We have already noted in the last chapter that almost all leaders of the early Congress were under the influence of the Western civilization. Some of them regarded Western religion, literature, political institutions, language, civilization and culture, as distinctly superior to that of the Indians. Side by side however another set of men, like Swami Vivekananda, Lokmanya Tilak, B.C. Pal and Arvinda Ghosh, began to unfold the beauties of the ancient Indian culture and religion. In 1893, at Chicago was held the Parliamant of Religions, wherein India was represented by Swami Vivekananda, who unfolded before the American public the catholicity of the Indian culture and the Hindu religion. He had an intense faith in the spiritual mission of India, but considered political freedom indispensable before it could be

realised. Mrs. Annie Besant also helped in this revivalism. Tilak decried every thing Western and preached intense love for India and things Indian. Lala Lajpat Rai pooh-poohed Anglicised Indians who were aping Western customs and habits and were forgetting their own hoary culture. B. C. Pal appealed, in the name of Kali and Durga for acquiring strength and cultivating the capacity to strike. Aravinda said, "Independence is the goal of life and Hindusim alone will fulfil this aspiration of ours." Most of the early leaders of the Extremists were under the influence of Hindu revivalism and some of them were deeply religious men.

(iii) **The discontent created by the Famine of 1897 :** A famine broke out in India in 1897 and affected about twenty million people and 70,000 square miles of Indian territory. The attitude of the Government was rather unsympathetic and efforts made by it to check the epidemic were wholly unorganised. People died in large numbers. It was felt by Indians that any national government, under similar circumstances, would have staked its all to save the people from the clutches of draught and hunger. The Government became a target of attack everywhere and a good deal of resentment grew against the Government.

(iv) **The outbreak of Plague :** Hot on the heels of the aforesaid famine, there burst out a virulent bubonic plague in the western part of the Bombay Presidency. The Government was no doubt earnest in checking the epidemic, but the chief mistake of the Government was that it employed an altogether official machinery for the purpose. Soldiers were requisitioned for this service. They were given the right of inspection of houses and were required to remove the infected persons to isolation hospitals. The methods employed by the Government were extremely unpopular, because the illiterate and orthodox people resented very much the entry of the soldiers in their houses, even for inspection purposes and also the removal of their women and children to isolation hospitals. The officers controlling the disinfection and evacuation processes began to be hated by the orthodox public. A sensitive youngman, in a fit of frenzy, shot dead Mr. Rand, the Plague Commissioner of Poona and one of his associates. The youngman who committed this act was sentenced to death and hanged.

Lokmaniya Tilak made political use of the resentment of the public against the Government. In his paper 'Kesari', he had directed a bitter attack against the Government for the steps taken by it to check the epidemic. Consequently he was tried as an instigator of the murder of Mr. Rand on the basis of certain writings in 'Kesari', which were considered to be an open incitement to violence. Tilak was found guilty by a jury on which Europeans were in a majority and was sentenced to 18 months' rigorous imprisonment. Tilak asked for permission to appeal to the Privy Council against his conviction, which was refused. By then, Tilak had already captured the imagination of the masses. His trial,

imprisonment and the refusal of permission to appeal to the Privy Council sent a wave of indignation throughout the length and breadth of the country against the Government and won many new adherents to the cult of Extremism.

(v) **The Repressive policy of Lord Curzon:** Lord Curzon remained the Governor-General of India from 1898 to 1905. Curzon seldom paid any heed to popular sentiment and demands. He was no doubt for efficiency in administration; but his fault was that he lived in a world, from where he could hardly understand the Indian mind and character. He had a very poor opinion of the Indian character and was not afraid of saying so publicly. He openly said that Indians were unfit for higher services, which must continue to be manned by the European alone. This he considered necessary, because of his faith about the higher qualities of head and heart possessed by the Europeans and because of their position as the rulers of India. In-February 1905, he delivered the convocation address at the Calcutta University, wherein he said, "The higher ideal of truth, to a large extent, is a Western conception and that truth took a higher place in the moral codes of the West, before it had been similarly honoured in the East, where craftiness, diplomatic vile have been held in high esteem". This was a slur on the Indian character and was bitterly resented by the whole nation. It was too sweeping a generalization to be swallowed. Spirited retorts were issued against this mad outburst and the whole episode left a festering wound in the Indian mind.

During the Viceroyalty of Lord Curzon many unpopular measures were enacted, the chief of which were the Calcutta Corporation Act of 1899, Indian Universities Act, 1904 and the Official Secrets Act. The object of the Corporation and Universities Acts was to officialise these bodies and thus to bring them under the influence of the Government. His Frontier Policy and the Mission to Lhasa were also resented. A deputation was sent to wait upon him in order to point out the opinion of Indians about these measures. Lord Curzon refused to see the deputation. The Congress sent Mr. Gokhale and Lala Lajpat Rai to England to point out to the British Government and public the high-handedness of the steps taken by the Indian Government. Lala Lajpat Rai returned disappointed. On his return to India, the message which he brought to his people was that, if they really cared for their country, they would have to strike the blow for freedom themselves, and that they would have to furnish unmistakable proofs of their earnestness.

(vi) **Ill-treatment of Indians abroad:** The treatment meted out to Indians in South Africa was humiliating and deplorable in the extreme. Indians were not allowed to build houses in certain localities, which were reserved for Europeans and were not allowed to buy property there. They were not admitted to

certain types of schools, hospitals and hotels. They were not allowed to travel in upper railway classes along with Europeans. The cup of their humiliation was full, when in 1907 the Transvaal Government passed the notorious Asiatic Registration Act, which required that all Indians living in South Africa must get themselves registered and leave their finger-prints. Mahatma Gandhi was a practising Barrister in South Africa at that time. His mind revolted against this injustice and he decided to defy the Government even single-handed at a place so far away from the country of his birth. He refused to get himself registered according to this "Satanic Law" as he called it, and started, along with some other Indians, the *satyagraha* i. e., passive civil resistance campaign. The Indians at home were watching helplessly the chagrin, shame and humiliation which fell to the lot of their brethren in South Africa. They were angry at the attitude adopted by the Government of India, which stood as a silent spectator of all this nauseating tragedy. Indians began to feel that they were humiliated abroad, because they were slaves in their own country and because their own Government was not prepared to defend them and to retaliate on behalf of them. The apathy of the Government was believed to be responsible for the humiliation of Indians abroad.

(vii) **Partition of Bengal :** The last official Act of Lord Curzon was the Partition of Bengal. The Province of Bengal was sought to be divided into two parts i. e., the western and the eastern Bengal. In the western Bengal Hindus were in a majority and in the eastern zone Muslims were in preponderance. It was said that Partition was necessary for administrative convenience and efficiency because the Province had become very unwieldy. But Indians in general and the Bengalis in particular clearly realised that it was a subtle move on the part of the British Government to weaken the forces of nationalism in Bengal, by weaning away the Muslims. Lord Curzon visited east Bengal and in his attempt to win over Muslims in favour of the Partition, said that the Partition would create in east Bengal a Province, where the Muslims could flourish without the dominance of any other community. The Partition was taken to be a clever move to play the game of divide and rule. Some of the Muslims were apparently caught in the snare. The speeches and intentions of Lord Curzon and other British officials might have been misunderstood, but the subsequent riots which occurred were attributed by the Hindus to those speeches.

A vigorous agitation started against the contemplated Partition. Swadeshi movement had already been gaining ground in Bengal and other Provinces of India for some time. The people of Bengal retaliated by giving a vigorous start to the movement for the boycott of foreign and especially the British goods. The Swadeshi and the boycott movements spread throughout the length and breadth of India and especially in Bengal. Curzon executed the Partition Plan and rode roughshod over the sentiments of the Indian public.

Many authorities on the national movement are agreed that the Partition became the direct and immediate cause of the growth of the Extremism and terrorism in the country. The Partition was no doubt accomplished under the threat of the British bayonets; but it left Indians bitter and the Bengalis sullen. Many a young man in Bengal took a vow to get the wrong righted by peaceful agitation, if possible, and by violent methods, if necessary. The Partition day began to be observed in India everywhere to register protests. Many young men formed secret associations, whose object was to avenge the wrong by fair or foul means. People lost faith in the integrity and sense of justice of the English rulers. Mr. Gokhale was sent to England to appeal to the British Government to undo the wrong. The Secretary of State, Mr. Morley, told Gokhale that Partition could not be annulled. Even the Moderates, who were in full sympathy with Bengal in its agitation against the Partition, began to doubt the efficacy of their constitutional methods, which they had been following so far. Gokhale admitted that "youngmen are beginning to ask what was the good of the constitutional method, if it was only to end in the Partition of the Bengal".

(viii) **Myth of European supremacy exploded**: Near about the end of the 19th century certain events happened in Europe, which had far-reaching repercussions on the national movement. In 1896, Italy was defeated by Abyssinia and in 1904-5 Russia was defeated by Japan. Thus, two European powers had been defeated by Asian powers. Up to that time, the superiority of European powers over Asians in the matter of warfare was taken for granted and the European armed might was considered invincible. The results of these two wars exploded this myth. Youngmen began to study the Japanese ways of life and warfare and began seriously to evaluate the chances of defeating the British by some form of violent action, if not in a regular war.

✓ **The birth of Extremist Party**: As a result of the cumulative effect of the above-mentioned causes, a left wing of the Congress began to be formed, under the leadership of Lokmanya Tilak, Pal and Lala Lajpat Rai. The adherents of this school held their inaugural sitting in the Congress pandal at Benares in 1904 during the annual session, when the Party may be said to have been formed.

During the 1905-session, differences between the two wings of the Congress became quite apparent. Before the session commenced, Lala Lalpat Rai and Gokhale had just returned from England disappointed. The session was held at a time when the wounds caused by the Partition of Bengal were still fresh and Bengal was very much agitated. Gokhale presided over this session. The Prince of Wales was to visit India in 1906. The Government was keen that the Royal visitor should not be shown any discourtesy. The Moderates wanted to pass a resolution welcoming the Royal party. The Extremists and especially the Bengal delegates were opposed

180040
2200/3

to it. The resolution welcoming the Prince of Wales and his party was allowed to be passed in the absence of the Bengal delegates. Gokhale, in his presidential address, expressed resentment against the attitude of the Government, condemned the Partition and approved the movement for Swadeshi. The sacrifices of Bengal in the cause of Nationalism were placed on record. Lokmanya Tilak wanted a resolution to be passed for starting passive resistance movement against the Government, but this was not done. Thus 1905 session ended with a good deal of estrangement.

In the 1906 session held at Calcutta, the relations between the Moderates and the Extremists were still very tense. The Secretary of State, in the meanwhile, had declared that Partition was "a settled fact." When the 1906 session met, the Extremists wanted to propose the name of Lokmanya Tilak for the presidential chair. This was too bitter a pill for the Moderates to swallow. The difficulty was tided over by proposing the name of Dadabhai Naoroji, the grand old man of India, who was universally loved and respected. In a way, the 1906 session was a triumph for the Extremists. They compelled the Moderates to pass a resolution on all the four important planks in their programme, i. e., swaraj, swadeshi, boycott and national education. For the first time in the history of the Congress, it was resolved that "self-government like that of the United Kingdom or Colonies was the goal of India." The outcome of 1906 session was evidently not to the liking of the Moderates.

The Surat Split : Before the 1907 session was held, Lord Minto started negotiations with the Moderates for further reforms. The Extremists were offended by these negotiations because they doubted the capacity of the Moderates to take up a bold stand. Hence they decided to capture the Congress during the ensuing session. At the Surat session, there developed a difference of opinion regarding the election of the President. According to a convention, the President of the reception committee of the last session was generally voted to the chair. Hence, the Moderates wanted to propose the name of Dr. Rash Behari Ghosh, whom the Extremists opposed for his moderate views. The Extremists wanted to have an open election and desired to propose the name of Lala Lajpat Rai, who declined to stand under such circumstances. The name of Dr. Rash Behari Ghosh was eventually proposed for the Chair, the Extremists opposed and the meeting was adjourned by the Chairman to avoid an unruly scene.

On the following day the Congress met again, only to be dispersed again by the police for rowdyism. Thus, the Surat session ended in a complete rupture between the two wings. As the Extremists were in a minority, they left the Congress. A Committee was appointed by the Surat Congress to draft a constitution for the Congress to avoid such unseemly wrangles in the future. In the constitution drafted by the Committee, it was clearly laid down that the method followed by the Congress *must be strictly constitutional*.

The constitution also laid down that in future only those who submit to the constitution in writing would be admitted as delegates. Thus all threats of passive resistance and boycott as means for achieving the end of the Congress, on which Tilak and his followers were so keen, were permanently ruled out. There was a clear attempt to step down, even from the position taken up in 1906, regarding the boycott and the national education. *To make dim*

Stern repression and eclipse of the Extremists: It was clearly the policy of the Government to crush the Extremists by force. Early in May 1907, Lala Lajpat Rai and Sardar Ajit Singh of the Punjab were deported to Mandalay without trial. Even Gokhale openly criticised the Government vehemently for this act. Lala Lajpat Rai was released after about 6 months. He went to England and returned to join the Surat session. Sardar Ajit Singh decided to stay outside India and returned only in March 1947, after staying outside for about 40 years. The Newspaper (Incitement to Offences) Act of 1908 was passed to throttle the voice of the press. The Criminal Law Amendment Act, 1908 was placed on the statute book, wherein a special form of trial was prescribed for the terrorist offences. Many leaders were deported out of India under the Regulation III of 1818. Lokmanya Tilak was sentenced to 6 years' rigorous imprisonment in 1908 on the basis of some writings in the *Kesari*. The Seditious Meetings Act, 1911 was passed, giving the authorities arbitrary powers to stop persons from addressing certain meetings and even to refuse permission for the holding of those meetings. In Bengal many persons were tried, convicted and even executed for terrorist activities. Many editors, printers and publishers were similarly rounded up.

All this resulted in a further wave of terrorist crime. The country was caught in a vicious circle. Government repression and high-handedness led to further terrorist crime. Thus between the years 1906 and 1911, there were unprecedented terrorist crime and the Government repression in India. The stern policy of the Government failed to root out the terrorist movement. It only sent it under-ground. Lord Morley confessed that the Indian Government was following the "Russian argument of packing off train-loads of suspects to Siberia to terrify the Anarchists out of their wits".

Failure of the Terrorist movement: As a result of this repression the Extremist movement was not exactly crushed. It broke down and got demoralised. Most of its leaders went under-ground and began to follow secret activities. Another reason for the failure of the terrorist movement was that the Extremists lacked any central organisation on an all-India basis. Moreover, their creed of violence did not appeal to the elderly people. It was practically impossible to measure strength with the Government in a violent manner. The Government had systematically followed the policy of disarming the nation after the Mutiny.

The terrorism abated after 1911, when Lord Hardinge came to India as the Governor-General and began to handle the situation with sympathy and tact. Till then, sporadic terrorist crime continued.

Different groups among the Extremists : We may roughly divide the left wing of the Congress into three groups, i. e., Terrorists, Revolutionaries and Extremists.

Terrorists : The Terrorists were a small group of youngmen, who believed that the British rule was an unmitigated evil and that it was fraught with the gravest and dangerous consequences for India. Violence was the only method by which the British could be ousted from India. They considered it their duty to kill Europeans and specially the Englishmen. Secret murders, destruction of the Government property and sabotage were advocated for achieving the freedom of India. (According to the Terrorists, end justified means. These persons were intensely emotional and religious. They believed in the cult of bomb. The group mostly flourished in the eastern Bengal. Because of the outright belief of this group in violence and its extreme philosophy, it could not make much headway in the country. Its membership remained small and most of the murders of Europeans and Englishmen were attributed to this group. The Government dealt with them in a stern and ruthless manner.

Revolutionaries } Revolutionaries were those persons, who believed in over-throwing the British Government in India as a result of a general uprising against the Government. These people did not approve individual and secret murders, destruction of Government property, killing of the Europeans, etc. Their object was to stage a sort of revolution or a popular uprising in the country in order to bring about the downfall of the Government. These persons advocated tampering with the loyalty of the army and even gorilla warfare in the country, which might lead to the over-throwing of the Government. They openly confessed that they would depend on the supply of arms in such a warfare on foreign countries, hostile to Britain. Hence they were for an organised rebellion against the Government. The Revolutionaries come mid-way between the Terrorists and the Extremists. Lala Hardayal and the Ghadar Party belong to this group. Their number also remained small.

Terrorists and Revolutionaries came into prominence after the Bengal Partition. They were mostly active from 1906 to 1911. They were ever prepared to make the utmost sacrifice for the country. The rift in the Congress in 1918 further weakened them. From 1919 onwards Mahatma Gandhi became the leader of the Extremists and the Congress came completely under his guidance. As Mahatma Gandhi's attitude against violence was uncompromising, the Terrorists and Revolutionaries could not have much future in India, except as a tributary current of the national movement. They acted as a spur to the Congress and sanction against the Government.

Extremists and their Principles : The third group were the Extremists who constituted the bulk of the left wing in the Congress. It was their belief that Swaraj was the birth-right of India and that it was not a sort of gift which was to come from the British Government. Lokmaniya Tilak had given nationalist India the inspiring slogan : "Swaraj is my birth-right and I must have it." Every Extremist believed in the truth of this slogan. In 1906, the Congress proclaimed Swaraj for India as its goal. The Extremists did not believe in working for piece-meal reforms as did the Moderates. They insisted that, "Liberty alone fits men for Liberty", and that once India was free, progress in other directions would follow, as a matter of course. Most of the Moderates, on the other hand, believed that India should first be raised socially, culturally and economically, and only then the conferment of Independence would be justified and fruitful. Hence the Extremists, as a rule, did not agitate for petty reforms here and there, but aimed at complete Swaraj as the panacea for all the ills from which India was suffering.

The Extremists, unlike the Moderates, had no faith in the constitutional methods. It was their conviction that prayers and petitions would not do for winning freedom. What was necessary was the creation of strength in Indians themselves. They called the method, followed by the Moderates, as the method of 'political mendicancy', i.e., begging for political advancement. The Extremists felt that the work in Councils would never bring India near Swaraj. What was necessary was a self-reliant action. The Extremists believed in organising an effective agitation against the Government in the masses, so that the Government should be compelled to part with power.

They also pinned their faith on constructive work, physical and moral uplift of Indians, so that they should be able to prepare Indians for the struggle with the Government, which lay ahead. They believed in fostering the spirit of Swadeshi and its counterpart, the boycott of foreign goods, among the masses. In the last resort, they advocated passive resistance, i.e., non-violent civil disobedience and non-cooperation with the Government in all fields of administration.

Most of the Extremists realised that the use of force was not prudent, because India was a disarmed nation. At the same time, there was a body of Extremists, who believed that the use of force in some form and at some stage might prove unavoidable in order to wrest power from the unwilling hands. The Extremists believed that the end justified the means ; somehow the Swaraj must be won and the Britishers driven out from the land. This was in direct contrast to the lifelong policy of Mahatma Gandhi, who believed not only in the purity of the end, but also in the purity of means. Lokmaniya Tilak was the god-father of the Extremist school.

The Extremists had no faith in the British sense of justice or fair-play. They believed that the Britishers had conquered India for selfish ends and would continue to govern India for similar ends, unless compelled to quit. According to them there was no generosity in politics. It was against the economic interests of England to release India from her bondage. The Extremists did not regard Indian connection with England to be for the good of India. Most of them believed that the British people had harmed, were harming and would continue to harm Indians. Some indirect good might have resulted from the British rule. The loss to India was heavy and crushing. The Extremists, as a rule, believed that the ancient Indian culture was superior to the Western culture. They hated Anglicised Indians, who were aping European in customs, manners and culture. They loved everything Swadeshi.

Effect of Extremist movement on national struggle : It must be admitted that the birth and growth of the Extremism had a very healthy effect on the fortunes of the national movement in India. The Moderates were, no doubt, honest and sincere in their love for the country ; but their method lacked effectiveness and vigour. Simple requests and petitions would have taken India nowhere. Some sanction was necessary to back up the national demand and this was supplied by the Extremists. It was to prevent the national movement from falling into the hands of the Extremists that the Morley-Minto reforms were hastened. During 1907-1916 the Extremists remained a hidden danger for the bureaucracy. Anything worthwhile is seldom achieved, unless it is backed up by willingness to make a sacrifice. The Moderates were not prepared for making sacrifices. The Extremists supplied a crop of martyrs to the national movement.

It should also be noted that the Terrorists and the Revolutionaries, though honest and sincere patriots, were wrong and sometimes misguided in their methods. Secret crime is generally reprehensible, although its use can be understood when the Government is ruthless, repressive and wrong. It should also be noted that at least from 1917 onwards, the Congress had completely passed into and remained in the hands of the Extremists, under whose guidance the whole of the national struggle has been carried on to a fruitful termination. Mahatma Gandhi was an Extremist *par excellence*. He was even a revolutionay in a sense. He insisted on non-violence and truth, while adopting the creed of the Extremists.

CHAPTER. VIII

RISE OF MUSLIM COMMUNALISM IN INDIA

Mohammedans had ruled over India centuries before she passed into the hands of the British. As ex-rulers of India before the British, Muslims had acquired a certain degree of superiority complex in their attitude towards the Hindus. Later, as a conquered race, they nursed a good deal of resentment against the British rule. Hence it was difficult for them to reconcile themselves to their subordinate position under the British masters.

In between the two communities, *i.e.*, the Hindus and Muslims, the policy followed by the East India Company, to start with, was that of favouring the Hindus. This was natural because the British looked upon Muslims as permanently hostile to their rule. As the result of this policy, the Company began to oust Muslims from all positions of importance and from every walk of life, including the government jobs. The destruction of indigenous or cottage industries in India at the hands of the Company adversely affected mostly Muslims. The Educational policy of the Company also proved detrimental to their interests, because the Muslim failed to take advantage of it. "In the army their recruitment was limited, in arts and crafts they were crippled and rendered helpless".

The Wahabi Movement : The Wahabi movement which started in Arabia towards the end of the 18th century had an encouraging effect on the Indian Muslims. The movement was purely religious in the beginning and was brought to India by Saiyyid Ahmed Brelvi. When it began to spread in India, it gave new hope and ambition to the depressed Muslims, who felt elevated at the glorification of their religion. In India, the movement soon acquired a popular and revolutionary character, because it preached hatred against a foreign master and came handy to Muslims, who were groaning under the British rule. In short, Wahabism fanned the flame of communalism and anti-British feeling in Muslims. The British rulers of India became naturally the enemies of the Movement and it was ruthlessly crushed as seditious. But before it finally died, it had served as one of the causes responsible for the outbreak of the Mutiny. According to Sir John Kaye, "The prime movers in the rebellion were Musalmans", and according to H. C. Bowen, "Those Muslims were undoubtedly Wahabis".¹ It

1. Mehta and Patwardhan : The Communal Triangle, p. 96.

was commonly believed by the British Government that the Mutiny was mostly engineered by Muslims and, therefore, the Government became even more anti-Muslim after the Mutiny.

There was one more aspect which added to the degradation, depression and demoralisation of Muslims. They had not taken kindly to the English education: may be, because of poverty or because of grouse against the British Government. The Hindus, on the other hand, began to make progress right from the time the East India Company began to acquire territorial possessions in India. Their entry into the Government service was encouraged. They began to acquire the English education with great eagerness. The result was that by the seventies of the 19th Century, the Hindus had stolen a complete march over Muslims in every walk of life, the realization of which depressed Muslims, still further.

Work of Sir Syed : Sir Syed Ahmed was the man, who was mostly responsible for bridging the gulf between Muslims and the British rulers and also for infusing in them a desire to acquire the Western education. He entered service under the Company in 1837 and during the Mutiny proved a loyal friend of the British. In 1869, he visited England and was much impressed by the liberal English education. In 1876, he retired from Government service and decided to devote the rest of the life to the service of his community. In pursuance of this aim, he founded a Mohammedan Anglo-Oriental College at Aligarh, which became the nursery of the educated modern-minded Muslims and became the focal centre of the Aligarh movement of later years.

Sir Syed Ahmed advised Muslims to keep aloof from the Congress, because in his opinion the Anglo-Muslim alliance was more profitable for the Muslim community than co-operation with the Hindus in the national agitation. In 1887, he organised the Muslim Educational Conference, which began to hold its sessions, like the Congress, every year. In 1888, when the Congress became a suspect in the eyes of the Government, he founded the Patriotic Association in league with Raja Shiva Prasad of Benaras, with the set purpose of opposing the Congress and to counteract its activities. In his early days, Sir Syed gave ample proof of his nationalist views. By the eighties of the 19th century, Sir Syed had become an arch enemy of the Congress and a rank communalist. It is usually believed that the change was brought about mainly by Mr. Beck, the English Principal of the Aligarh College, who misled Sir Syed into "believing that while an Anglo-Muslim alliance would ameliorate the condition of the Muslim community, joining the nationalist agitation would lead them once again to sweat, toil and tear". Whatever the reason, immediately after the birth of the Indian National Congress, Sir Syed began to work in a manner which certainly weakened the national forces.

Policy of divide and rule : We have already noted in one of the preceding chapters that the attitude of friendly neutrality which the Government had assumed towards the Congress at the time of its birth very soon gave place to one of active hostility. In 1888, during the fourth session of the Congress at Allahabad, the change in the attitude of the Government was quite apparent. For the Government, its future line of action was obvious. If they were to counteract the growing power of the Congress, they must find friend among the Muslims and start the policy of divide and rule. This sinister policy was started through Mr. Beck, the principal of the Aligarh College, whom Sir John Strachey described as, "An Englishman, who was engaged in Empire-building activities in a far-off land." In 1889, Mr. Beck sponsored a memorial of Muslims against the Bill introduced by Charles Bradlough with the object of introducing representative institutions in India. In 1893, the Mohammedan Anglo-Oriental Defence Association was formed with the active help of the Government to counteract the growing popularity of the Congress.

The policy of divide and rule was now started by the Government. The Congress was to be weakened by encouraging Muslims. The traditional anti-Muslim policy of the Government was now reversed and it became anti-Hindu. When, towards the beginning of the 19th century, the Extremists began to make their weight felt, the Government was exasperated still more and they adopted the Machiavellian game, even more blatantly. In 1905 the Partition of Bengal was proposed and executed. Whatever the official excuse for the Partition, it was a clever move to drive a wedge between the two communities and to weaken the forces of the Bengal nationalism by weaning away Muslims from the Congress. The policy of divide and rule was intensified after the entry of the Extremists. This was natural in view of the danger, the British Government felt, at the hands of Extremists leaders like Tilak, who led the Congress to pass in 1906 the resolution asking for self-government like that of the United Kingdom or Colonies. The Extremists had openly challenged the Government.

Muslim Deputation of 1906 and Separate Electorates : In the year 1906 something happened, which has coloured the whole subsequent national movement in India and has had far-reaching effects on the Hindu-Muslim relations. In 1906, Lord Minto had formed a Committee to consider the necessity of further reforms for India. This immediately led to a Deputation of Muslims, headed by His Highness the Agha Khan, which met Lord Minto at Simla on October 1, 1906 and claimed separate electorates, i.e., communal representation from the Imperial Legislative Council down to the District Boards and weightage to Muslims as something which was absolutely essential to protect their legitimate interests. Lord Minto was over-ready to accept the demands of the Muslims and said, "The pith of your address as I understand it, is a claim that in any system

of representation, whether it affects a Municipality, a District Board or a Legislature,.....the Mohammedan community would be represented as a body.....you *justly* claim that your position should be estimated not merely on your numerical strength but in respect to the political importance of your community and service that it has rendered to the Empire. I am entirely in accord.....*I am as firmly convinced*, as I believe you to be, that any electoral representation in India *would be doomed to mischievous failure*, which aimed at granting a personal enfranchisement regardless of the beliefs and traditions of the communities composing the population of this continent'. The words italicized tell a tale of their own. They show an eagerness to agree, which almost amounts to an encouragement. Thus, the principle of separate electorates was accepted. It was introduced in the 1909 Reforms. The Hindus and Muslims were to vote separately for their respective nominees, as a result of which the Hindus and Muslims were never united in a real manner hereafter, except probably during the days of Khilafat for a short time. Such was the nature of the poison injected by Lord Minto into the body-politic of India. It is, therefore, believed by some that "the real father of Pakistan was not Jinnah or Rahimattoola but Lord Minto."

Part played by Minto : There is a controversy as to whether this Deputation was sponsored by the British bureaucracy and their Anglo-Indian friends or depended on the initiative of Muslims themselves. Maulana Mohammad Ali, in his presidential address to the Congress in 1923 described it, as "a command performance". Prof. Coupland, the official historian of the Cripps Mission of 1942, on the other hand states, "There is no evidence to suggest that the Deputation of 1906 was in any sense engineered by the Government. The following relevant extracts lend support to the conclusion arrived at by Maulana Mohammad Ali :—

(i) On May 28, 1906, Lord Minto wrote to Lord Morley, "I have been thinking a good deal lately of a possible counter-poise to Congress aims."¹

(ii) On August 10, 1906, Mr. Archibald, Principal of Aligarh College, wrote to Nawab Mohsun-ul-Mulk, the Secretary of the Aligarh College, "Colonel Dunlop Smith, Private Secretary of His Excellency, is agreeable to receive the Muslim Deputation. He advises that a formal letter requesting permission to wait on His Excellency be sent to him. The formal letter should be sent with the signature of some representative Muslims. The Deputation should consist of the representatives of all the Provinces. I would here suggest that we begin with a solemn expression of loyalty. The Government decision to take a step in the direction of self-government should be appreciated. But our apprehension should be expressed that the principle of election, if introduced, would prove

1. A. C. Banerji : Indian Constitutional Documents, p. 205.

detrimental to the interest of the Muslim minority. It should respectfully be suggested that nomination or representation by religion be introduced to meet public opinion.....but in all these views I must be in the back-ground. They must come from..... We must expedite matters."¹

(iii) On the evening of the date of the Deputation, Lady Minto receives the following letter from an official, "I must send your Excellency a line to say that a very big thing has happened to-day. A work of statesmanship that will affect India and Indian history for many a long year. It is nothing less than the pulling back of 62 millions of people from joining the ranks of the seditious opposition."²

(iv) On December 6, 1909, Morley wrote to Minto, "I won't follow you again into our Mohammedan dispute. Only I respectfully remind you, once more, that it was your early speech about their extra claims that first started the M. (Mohammedan) hare. I am convinced my decision was best."

(v) The biographer of Lord Minto comments on the speech of the Viceroy before the Deputation as follows, "The speech undoubtedly prevented the ranks of sedition being swollen by Muslim recruits and an inestimable advantage in the day of trouble which was dawning."

Sometime after the formation of the Muslim Educational Conference, the Patriotic Association and the Upper India Defence Association, the educated Muslims began to discuss the desirability of starting some political association on the lines of the Congress. Sir Mohammad Shafi had advocated the formation of Indian Muslim League in 1901, but nothing tangible had come out of it. On December 30, 1906, exactly 90 days after the Simla Deputation, the Muslims League was formed at Dacca. The objects of the League were defined as follows :—

(a) To promote among the Musalmans of India feelings of loyalty to the British Government and to remove any misconception that may arise as to the intention of the Government with regard to any of its measures.

(b) To protect and advance the political rights and interests of the Musalmans of India and to respectfully represent their needs and aspirations to the Government.

(c) To prevent the rise among the Musalmans of India of any feelings of hostility towards other communities without prejudice to other afore-mentioned objects of the League."

This remained the politics and plank of the League till 1913, when, as the result of some factors, it came near to the Congress with regard to its objective.

1. A.C. Banerjee : Indian Constitutional Documents, Vol. II, p. 205.
2. Ibid, p. 209.

CHAPTER IX

MORLEY-MINTO REFORMS

(INDIAN COUNCILS ACT, 1909)

The Morley-Minto Reforms of 1909 represent the next constitutional advance after the Councils Act of 1892. They are associated with the name of Mr. Morley, the Secretary of State, and Lord Minto, the Governor-General of India.

Causes : Since the enactment of the Councils Act, 1892 Indian National Congress had been passing resolutions and agitating for the reform and extension of the Councils. Whatever jubilation was felt for the Councils of 1892, at the time of their inauguration, had very soon disappeared. Morley-Minto Reforms represented an attempt on the part of the Government to meet the demand of the Moderates, who were in a majority in the Congress. Gokhale visited England in 1907 and probably gave his acceptance to Mr. Morley for the Reforms, which followed.

Secondly, since the beginning of the nineteenth century, the ranks of the Extremists were swelling and they were openly denouncing the British rule. Violent political crimes had increased noticeably. It was under the influence of the Extremists that the Congress in 1906 had fixed its goal as self-government like that of the United Kingdom, even though it was presided over by so temperate a leader as Dadabhai Naoroji. In 1907, the same objective was incorporated in the constitution of the Congress. Hence the most important cause of the Reforms appears to be an anxiety on the part of the Government to save the Indian National Congress from passing into the hands of the Extremists.

And lastly, India was seething with discontent after the reign of Lord Curzon, who had gravely injured Indian sentiments by his unwise utterances and had followed a high-handed policy throughout his administration. The Bengal Partition had caused the greatest wound. The outcome of Russo-Japanese War had encouraged young Indians to the belief that the British Government could also be thrown out of India by violent means. The Reforms were enacted also to remove discontent and to bring about peaceful atmosphere in the country.

The official view of Reforms : Both Lord Morley and Lord Minto appeared to have agreed on the principle underlying the

Reforms. It was not, according to them, possible to introduce responsible government in India. Lord Morley did not appreciate the idea of self-government like that of Dominions for India and compared it to a fur-coat of Canada that could never suit the Indian conditions. He plainly told Gokhale that such a desire was crying for the moon. He strongly repudiated any attempt to read in the Reforms the beginning of responsible form of government in India. In the House of Lords on December 8, 1908, he said, "If I were attempting to set up a parliamentary system in India, or if it could be said that this chapter of Reforms led directly or necessarily to the establishment of parliamentary system in India, I for one would have nothing at all to do with it a parliamentary system is not at all the goal". Morley and Minto simply wanted to increase the scope of the existing Councils. The policy of mere association was still the goal.

Main Provisions of the Act : (1) *Changes in the legislative council* The number of the additional members was considerably raised in the Imperial as well as the Provincial Councils. For the Imperial Legislative Council, the maximum number of additional members was raised from 16 to 60. The number of such members for the Bengal, Madras and Bombay Councils was raised from 20 to 50, for the U.P. from 15 to 50 and for the minor Provinces the maximum number was fixed as 30. The actual number of members was slightly different, as laid down by the Regulations made under the Act.

(2) The members of these Councils, after the Reforms, were divisible into four categories. Firstly, there were the *ex-officio* members, who held office by virtue of their holding certain Government jobs, e. g., in the Imperial Legislative Council the Governor-General and the ordinary members of his Executive Council were *ex-officio* members. Secondly, there were the nominated officials, i.e., those persons, who were holding jobs under the Government and were nominated as members of Legislative Councils. Thirdly, there were the nominated non-officials, i.e., men from public life nominated by the Government as members. And fourthly, there were members elected by 'classes', 'interests' and 'communities,' e.g., out of 27 elected members in the Imperial Legislative Council, 5 were elected by Muslims, 6 by Landlords, 1 by Mohammedan Landlords, 1 each by the Chambers of Commerce of Bengal and Bombay. The remaining 13 were elected by the non-official members of the 9 Provincial Councils. The system of election was a novel one. The constituencies were divided into Provincial Councils, Muslims, Landlords, Muslim landlords, Chambers of Commerce, Universities, Corporations, Municipalities, District Boards, etc. The framers of the Reforms were definite that the system of 'general electorates' and 'territorial representation' was not suitable for India and that 'communal representation', and system of election based on classes and interests was the only practical and just method for the Central as well as the Provincial Councils.

③ In the Supreme Legislative Council a majority of the official members was maintained; whereas in the Provincial Councils there were majorities of non-official, though not elected, members except in Bengal, where there was a small majority of elected members. Mr. Morley was quite emphatic on the necessity of maintaining a majority of official members in the Imperial Legislative Council in order to enable the Government of India to discharge properly "the constitutional obligations that it owed to the Imperial Parliament for the administration of India". As far as the Provincial Legislative Councils were concerned, Morley saw no harm in conceding a majority of non-official members. It should be clearly understood that the *non-official* majorities provided in the Provincial Councils did not mean majorities of *elected* members. This is necessary to emphasise, because the non-official members, included nominated non-officials, who being obliged to the Government by the act of nomination, generally voted with the Government.

② The functions of the Legislative Councils were also enlarged. Firstly, the power of asking supplementary questions, which was so far denied, was allowed; but only to the member who had asked the previous question. Secondly, the Councils were given the right to move resolutions on matters of general public interest and the right of recording their votes in the Council thereon. Thirdly, a greater non-official influence over the budget was also conceded. Resolutions could be moved and votes taken on heads of expenditure as well as revenue. Some items were, however, treated as non-votable. It was however entirely for the Government to defer to such voting or not.

④ In the Morley-Minto Reforms, some provisions were made, which concerned the Executive Councils. Power was given to the Secretary of State-in-Council to raise the membership of the Executive Council in Madras and Bombay from 2 to 4, of whom at least half must have worked at least for twelve years in the service of the Crown in India. The Governor-General-in-Council was given the power to establish an Executive Council in Bengal, of not more than 4 members, with the approval of the Secretary of State. With regard to other Provinces such actions of the Governor-General-in-Council not only required the approval of the Secretary of State, but were also subject to disallowance by the Parliament.

⑤ Two Indians were appointed as members of the Secretary of State's Council in 1907. One Indian was made a member of the Governor-General's Council in 1909. This was a very welcome change, as it provided a chance for some Indians to be associated with the executive side of the administration and thus to acquire experience of the executive work. In England as well as in India there was a good deal of opposition against this step on the part of the bureaucracy. But Morley considered the step in keeping with the spirit of the new Reforms.

Shortcomings of the Reforms : We have already noted that Morely had discussed the nature of the Reforms with Gokhale before they were actually introduced. In 1908, the Congress which was then entirely under the control of the Moderates had expressed "its deep and general satisfaction at the Reform proposals formulated in Lord Morley's despatch." But only a year later, i. e., in 1909, the Moderates were disillusioned and the Congress of the year "placed on record its strong sense of disapproval at the creation of separate electorates, etc." In 1908, Mr. Gokhale described the Reforms as, "modifying the bureaucratic character of the Government." In 1910, he was bitter over the Reforms and thought that the Rules and Regulations made to implement the Reforms were so framed that they destroyed whatever good the Reforms contained. The Reforms were usually criticized on the following grounds :—

Firstly, the system of election was indirect and, at places, even doubly indirect. Under such a system any fruitful contact between the voters and the representatives was impossible. The elections held under the Reforms failed to create interest in the voters and provided little scope for political education. Secondly, the representatives came from so many divergent interests, classes and communities that it was difficult for them to work as a team and to forge a common front against the Government in the Councils. Thirdly, no general electorate was in fact created, except for the Muslims. Representation was given to classes and interests, which resulted in splitting the country into many divisions and segments. Fourthly, the communal venom was introduced into the body politic of India for the first time through communal electorates, which rent assunder all hopes of evolving unity in India. The Hindu-Muslim antagonism followed, as never before. Fifthly, the presence of the official blocs made all opposition of the elected members ineffective. These blocs worked as compact bodies and invariably voted with the Government. In 1910, Mr. Gokhale complained before the Imperial Legislative Council, "that once the Government had made up their mind to adopt a particular course, nothing that the non-official members may say in the Councils is particularly of any avail in bringing about any change in that course." This gave the Councils an air of utter unreality. The nominated non-official members generally voted with the Government, making the non-official majorities in the Provincial Councils useless. Sixthly, the regulations were so framed that the ~~Extremists~~ could be excluded from Councils by a list of disqualifications. The election of Mr. N. C. Kelkar was disallowed because in the opinion of the Government, his antecedents and reputation rendered his election contrary to public interests. Seventhly, the right of asking questions and supplementary questions, of moving resolutions, discussing and voting upon them and the right of discussion and vote on certain items of the budget were hedged about with many limitations. Eighthly, no goal was fixed for the future. The people were "groping

In the dark and knew not where they were heading to". Parliamentary institutions were given, but parliamentary ideal was stated to be not the goal. "Parliamentary usage was adopted without parliamentary government, and the result was fiction". The members had the right to record an adverse vote, but this involved no liability on the Government to resign. And lastly, the elected members indulged in destructive criticism, knowing full well that they were not liable to be called upon to shoulder responsibility. The Government complained that the members barked too much. The members knew they could not bite.

Utility of the Reforms : From the foregoing, we should not conclude that the Reforms were useless. "They gave Indians much valuable training without which they would not have been able to make the best use of the legislatures as subsequently expanded and reformed under the Act of 1919". From a broad evolutionary point of view, the Reforms were a necessary and useful stage in India's advance towards self-government.¹ The Morley-Minto Reforms brought parliamentary institutions to a point, from where parliamentary responsibility could not be denied. They certainly proved "a decided step forward on a road leading at no distant period to a stage at which the question of responsible government was bound to present itself".² The reforms were a necessary transitional stage, just another step on the road towards responsible form of Government. A jump from 1892 to 1919 would have been radical, if not revolutionary: the one from 1909 the 1919 was natural and inevitable.

The Reforms were a decided advance on the Act of 1892. The number of Indians on these Councils was increased a good deal. The principle of indirect election was legally introduced. The right of asking supplementary questions was an important advance, because it gave the Councils the right of cross-examining the Government. The right of voting on some items in the budget and the rights of moving resolutions on the whole range of the administration were definite gains. All the same, the Reforms implied a change of degree and not of kind. It was merely an extension of the Policy of Association, which was introduced in 1861 and extended in 1892. It was rather the culmination of the policy of Benevolent Despotism in India. It was the 'culmination', because that policy was stretched to its utmost limits under this Act without conceding responsibility to Indians.

1. Pradhan : India's Struggle for Swaraj, p. 110-11.
2. Montford Report, p. 40.

CHAPTER X

WORLD WAR I AND MONTAGU'S DECLARATION OF 1917

The Morley-Minto Reforms of 1909 started functioning from 1910. That very year, Lord Morley retired and Lord Crewe became the Secretary of State for India. Lord Hardinge succeeded Lord Minto as the Governor-General.

The failure of the 1909 Reforms : The Policy underlying the Morley-Minto Reforms proved a dismal failure. According to the authors of the Montagu-Chelmsford Report, Lord Morley and Minto hoped "to create a constitution about which conservative opinion would crystallise to offer substantial opposition to any further change." They sought the association of only those Indians who would "oppose any further shifting of the balance of power and any attempt to democratise Indian Institutions." Such an expectation was bound to fail. Neither the British Government nor those people who rallied round to work the Reforms could stem the tide of progress. The Councils which gave Indians the taste of parliamentary life served as an appetiser and themselves became the cause for the demand for real parliamentary government. Even Moderates were disillusioned about the Reforms. The British Government could no longer depend on their co-operation. The policy of repression adopted by the Government against the Extremists also failed to suppress them and very soon they again became a force to reckon with. This happened, when Mrs. Annie Besant entered political life in 1913 and the dynamic Lokmanya was released in 1914. The conservative element, on which the British Government had relied, proved a weak ally against the vigour of the progressive forces in the country. The policy of repression resulted in increasing discontent and dissatisfaction against the Government.

Lord Hardinge and his progressive Policy : Lord Hardinge had an altogether different outlook on Indian affairs from that of his predecessor. He was more inclined towards compromise than dictation. In a despatch of the Government of India of 1911 to the Home Government, which was mostly inspired by the progressive outlook of Hardinge, it was proposed that the Partition of Bengal should be annulled. It was also proposed that the capital of India should be shifted from Calcutta to Delhi.

Bengal Partition Annulled : That very year George V and Queen Mary visited India and held a Darbar at Delhi. His Majesty brought comfort to many a heart in India, by announcing the annulment of the Partition, which was imposed by the ruthless Lord Curzon. Thus Bengal was restored to its previous unity, and the "settled fact" was unsettled. The second announcement that His Majesty made was regarding the shifting of the Capital to Delhi. This was also gratifying, because Indians thought the Governor-General and his Councillors would no longer be under the sinister influence of the British tea planters of Calcutta. Delhi was welcomed also as a central place.

Damper by Lord Crewe : In the despatch of Lord Hardinge, referred to above, there was a suggestion that the policy of the Government of India was, "gradually to give the Provinces a larger measure of self-government, until at last India would consist of a number of administrative units, autonomous in Provincial affairs, with the Government of India ordinarily restricting their functions to matters of Imperial concern." This was an obvious hint to Provincial Autonomy. Lord Crewe wanted to remove this impression. While speaking to the House of Lords in June, 1912, he said, "There is a certain section in India, which looks forward to a measure of self-government approaching that which had been granted to Dominions. I see no future for India on these lines. The experiment of extending a measure of self-government, practically free from parliamentary control to a race which is not our own, even though that race enjoys the services of the best men belonging to our race, is one which cannot be tried. It is my duty as Secretary of State to repudiate the idea that the despatch implies anything of the kind as the hope or goal of the policy of Government." No body could have done worse to undo the good effect of His Majesty's Declaration of 1911 at Delhi to discourage Indian national leaders and to damp the spirits of Lord Hardinge. But Lord Hardinge persisted and was eventually successful in his mission, as the later events proved.

Lord Crewe's outburst was in line with the policy of Lord Morley, who also believed that the goal before India was anything but responsible government. The Moderates and their leaders like Gokhale persisted in believing that responsible government was the only logical consequence of the Reforms of 1909, in spite of these repeated denials to the contrary. Later events again proved that Morley and Crewe both were wrong and Gokhale was right. The speech of Lord Crewe again brought life and fight in the Extremists and the Moderates also began to ask for a declaration stating clearly that the goal before India was a responsible government. This, they said, was necessary in view of the repeated denials of the Government and to justify their co-operation with the Government in the eyes of the Extremists. In his presidential address at the Bombay Congress in 1915, Lord Sinha earnestly requested the British

What was the impact of Indian national movement in India.

Government for a declaration that self-government was the goal of the British policy in India. This he regarded as the barest minimum to pacify Indians.

First world war in the development of non cooperation movement.

War intensified Nationalism : In 1914, the first Great War started. It was again due to the wise and sympathetic handling of the Indian problem by Lord Hardinge that India threw herself wholeheartedly on the side of England. The result was that she helped in the War efforts magnificently with men, money and material. Mahatma Gandhi threw himself wholeheartedly in support of the War efforts. So far as help by Indians was concerned, only men like Mahatma Gandhi might have assisted in the War on moral basis for altruistic ends. The general body of Indians gave the unexpected help in the War efforts with a view to be rewarded in the form of political advancement, if not emancipation. The Allies had declared that they were fighting the War not for their selfish and Imperialistic ends, but to make the world safe for democracy. It was but natural that Indians, who were helping the Allies in every possible way, expected that the Government should at least declare that they would grant self-government to India after the War. This was considered necessary to prove the genuineness of their Declarations about the War, but the Government, unfortunately, kept silent. The Extremists once again, began to doubt the words of the British Government and started agitation.

There was another way in which the War brought India nearer to freedom. Our men travelled far and wide to take part in the War and activities connected with it. They realised the value of self-government. The contributions made by our soldiers in the War theatre made them hold their head high with pride. They could not understand why India should continue to be under the tutelage of England. The Indians saw before their very eyes the pitiable fate of the weak and slave nations. The Government was painting horrible pictures of life in the countries, which had come under the control of Germany, and prophesied doom for those who were in danger of being run over by the Germans. All this increased our eagerness to be free. Of course, no body asked for freedom when the War was on. What was asked for was a simple declaration that India would be self-governing after the war.

~~CONGRESS-LEAGUE PACT, 1916~~

Chapter 11

After the introduction of the Morley-Minto Reforms certain events happened, which brought the Muslim League nearer to the Congress. Firstly, the annulment of the Partition made the Muslims realise that the Government was no longer out to oblige them at the cost of the Hindus. Secondly, the whole policy of Lord Hardinge was one of neutrality in between the two communities. Thirdly, the head-office of the Muslim League was transferred from Aligarh to Lucknow and it was thus freed from the sinister influence of Becks

and Archibalds. Fourthly, "the Anglo-Russian *entente* had a distinctly cooling effect on the fervour of Indian Muslims for the British, who had been considered the traditional friends of Turkey against Russia."¹ Fifthly, "the policy followed by England towards Turkey during the Turko-Italian War and Balkan Wars showed that the Britishers were not really sincere friends of the Muslims."² Muslims expected that Great Britain would support Turkey, as she had done before; but they were sadly disappointed. And lastly, some progressive and enlightened Muslims like Maulana Mohamad Ali, his brother Shaukat Ali and M.A. Jinnah (who was a staunch nationalist at the time) wanted the League to throw off its policy of communalism and of servility to the British Government and of standing in the way of the Congress, in order to take its full share in the achievement of the freedom of the country.

All these causes made Muslims change their attitude towards the Government and come closer to the Congress. The result was that at its Lucknow session, held in March, 1913, the Muslim League adopted, as its objective, the "attainment, under the aegis of the British Crown, of the system of self-government suitable to India, through constitutional means by promoting national unity, by fostering public spirit among the people of India, by co-operating with the other communities in the said purposes." This implied a revolutionary change in Muslim League politics.

Congress response : The Congress held its session at Karachi in December, 1913, over which Nawab Syed Muhammad Bahadur presided. The Congress responded splendidly to the hand of friendship extended by the League, and "warmly appreciated the adoption by the all-India Muslim League of the ideal of self-government for India within the British Empire," and expressed, "its complete accord with the belief, which the League has so emphatically declared at its last session, that the political future of the country depends on the harmonious working and co-operation of the various communities in the country and most heartily, welcomed the hope expressed by the League that the leaders of the different communities will make every endeavour to find a *modus operandi* for joint and concerted action on all questions of national good."

The way was thus opened for bringing two organisations together. Mr. M. A. Jinnah was much responsible for this change in the League. It was again, because of his efforts, that in 1915 the League held its annual session at Bombay, where the Congress was also to meet for its annual session at that very time. The leaders of the two associations came in contact and pondered over the necessity of creating a joint front. The attempt was successful when the Congress and the League both adopted the famous Congress-League Pact in 1916 at Lucknow.

1. Zacharias : *Renascent India*, p. 160.

2. Bannerji : *Indian Constitutional Documents*, Vol. 2, Introduction, p. XXXII.

Communal Provisions of the Pact : These provisions were based on communal considerations. Firstly, the right of separate electorate for the Muslims was admitted although the Congress had opposed separate electorates, all along, as anti-national and disruptive. Secondly, the right of the minorities to weightage was also conceded. This meant the Muslims would be given more seats than they were entitled to according to their numbers in those Provinces, where they were in a minority as well as in the Centre. Thirdly, the minorities were given the right of vetoing a legislation, which concerned them and to which they were opposed. A provision was made that no bill or resolution affecting a community should be proceeded with, in any Legislature, if $\frac{3}{4}$ of the representatives of that community were opposed to it.

Criticism of the Communal Provisions : The Indian National Congress is usually criticised for agreeing to these communal provisions as the basis of the Scheme. It is held that communalism was accepted in principle by the Congress in 1916. In fairness to the Congress, it may be added that the Congress accepted these principles of communalism as a lesser evil. It thought that further progress was bound to be very slow, if not altogether impossible, unless the Hindus and Muslims pulled together in the struggle for freedom. These were genuine fears. (The Congress thought that once there was an acceptable compromise between the Hindus and Muslims,) there would be nothing to separate them again and they would continue to fight the battle of freedom hand in hand and that the communal electorates would prove a temporary phase in the political life of India. (The Congress leaders believed that after this compromise, when the Hindus and Muslims would work together, such a sense of unity, fellow-feeling and brotherhood would grow among them, that Muslims would willingly discard all those communal safeguards after some time.)

Later events, however, proved that the Congress was entirely mistaken in these calculations. The communal principles, once conceded, became the basis for claim to more and more communal advantages, in almost every walk of life. (The communal demands, once accepted, continued to figure in more and more hideous and dangerous forms in all later constitutional schemes.) The habit of claiming more and more rights as a minority on the part of Muslims grew as years rolled on. The Hindu-Muslim amity created by the Pact proved short-lived and illusory. The Congress, having once accepted the principle, became shy in discarding it outright at later stage. (This is amply proved by the dubious attitude of the Congress regarding the Communal Award, about which the Congress passed the notorious resolution of "neither acceptance nor rejection.")

Communal Provisions and their acceptance by the Government : The British Government, however, was simply too ready to accept the communal provisions and principles agreed in the

Scheme. The Government, evidently, wanted to kill the Congress with its own yard-stick. The communal provisions in a much more accentuated form were introduced in the Act of 1919. The Montford Report had declared the principle of communal representation "as highly dangerous and an obstacle in the way of unity and evolution of one nationalism in India." Yet its authors said that in view of the agreement of 1916 between the Congress and the Muslim League they had no choice, but to accept the principle of separate electorates. Evidently, communal provisions suited their design of dividing and then ruling India.

Constitutional Provisions and their rejection by the Government : Firstly, it was proposed that the Provinces should be freed from the control of the Central Government, as far as possible, in matters of administration and finance. Secondly, $\frac{4}{5}$ of the Central as well as the Principal Legislatures should be elected on the basis of as wide a franchise as possible. The remaining $\frac{1}{5}$ were to be nominated. Thirdly, at least one-half of the members of the Central as well as the Provincial Executive Councils were to be elected by the elected members of their respective Legislative Councils. Fourthly, the Central as well as the Provincial Governments were bound to act according to the resolutions passed by their respective Legislative Councils, unless vetoed by the Governor-General or the Governor as the case may be. When such a veto was used, the resolution, if passed again by the Council after an interval of not less than one year, would become operative. Fifthly, the Central Legislative Council should have "no power to interfere with the Government of India in the directions of the military affairs and the foreign and political relations of India, including the declaration of War, the making of peace and entering into treaties." In other words, in these affairs, the Central Legislative Council was prepared to leave matters in the hands of the Government. And lastly, it proposed that the relations of the Secretary of State with the Government of India should be made similar to those of the Colonial Secretary with the Governments of the Dominions and India should have an equal status with that of the Dominions in all those bodies which would concern themselves with the Imperial affairs.

Thus what the Congress and the Muslim League proposed was a form of non-parliamentary executive, somewhat on the Swiss model. The Scheme claimed some real power in the Provinces as well as at the Centre, simultaneously. The Indian National Congress as well as the Muslim League also passed resolutions to the effect that "the time has come when His Majesty the King Emperor should be pleased to issue Proclamation announcing that it is the aim and intention of British Policy to confer self-government on India at an early date," and that "India should be lifted from the position of a dependency to that of an equal partner in the Empire with the self-governing Dominions." The Constitutional proposals

contained in the Congress-League Scheme were too radical to be accepted by the Government, "which was not willing to part with real power either in the Provinces or at the Centre."¹ Hence the Government rejected those proposals on various excuses, real as well as imaginary.

Extremists join the Congress again : The National agitation remained at a very low ebb from 1910 to 1913. The lull in the national agitation was broken by the entry of Annie Besant in the political life of the country. Her immediate objective was to disentangle the Extremists from their dangerous alliance with the revolutionaries, to reconcile them to a position within the British Empire and to bridge the gulf between the Moderates and the Extremists. On her initiative, a step was taken by the Congress in 1915, which enabled the Extremists to be sent as delegates to the Congress of 1916.

Lokmanya Tilak was imprisoned in 1908 and sentenced to six years' imprisonment. When the War started, the Government wanted to pacify the Extremists in the interest of the War efforts. Lokmanya Tilak was, therefore, released in 1914, even before he had completed the six years' term of imprisonment. Immediately after his release he plunged headlong into the national struggle and began organising radical forces in the country. He was in favour of supporting the War efforts of the Government; but he was equally keen on continuing the national agitation. In Annie Besant, he found a great co-worker in the national cause. As already stated, Mrs. Besant had paved the way for the Extremists' return to the Congress, which they re-joined during the famous 1916 Lucknow session of the Congress. Hence the year 1916, not only saw a union between the Congress and the Muslim League in the form of the famous Pact, but is also important because of the re-union of the two wings of the Congress. In 1915, two very outstanding Moderate leaders, i. e., Gokhale and Dadabhai Naoroji died, which brought the Congress virtually under the control of the Extremists, led by Tilak and Mrs. Besant.

Home Rule movement : When Mrs. Besant had visited England in 1913, Redmondes' Home Rule League of Ireland suggested to her that a similar movement could be started in India. Throughout these three years she had been popularising the idea of starting a Home Rule movement. In the 1915 Congress, she proposed that a Home Rule League should be started. Tilak was in sympathy with this idea. According to them, the Congress of those years was rather lifeless, and a much more dynamic and vigorous association was needed to strike a responsive chord in the hearts of the masses.

Towards the end of the year 1915, Mrs. Besant actually started

1. G. N. Singh : Landmarks, 1st Ed., p. 547.

the Home Rule League. It was an association quite distinct from the Congress. The movement became very popular throughout the Madras Presidency immediately. Lokmaniya Tilak started a similar League in Maharashtra, which soon spread throughout the Bombay Presidency. Thus by the beginning of 1916, the Extremists had their separate organisations in the form of these leagues, but their real intention was to capture the Congress, which they virtually did in the annual session of 1916. After the 1916 Session, wherein the Congress-League Pact was signed, both these Leagues began to popularise the Pact in masses and meetings were frequently held to prepare the people for a national agitation. (Thus the year 1916 saw the Home Rule League carrying on an intensive propaganda in favour of Home Rule or self government.) In one of his speeches Tilak said, "Home Rule is my birth right and I will have it." The slogan became a catch-word throughout the country.

Lord Pentland, the Governor of Madras at the time, lost his balance. So much perturbed was he at the activities of Mrs. Besant that he immediately ordered the internment of Mrs. Besant along with her two workers, Wadia and Arundale. "This ill-considered and exasperating action of the Madras Government proved blessing in disguise," because immediately after his action, angry protest meetings began to be held throughout the country condemning the internment orders and reiterating the demands for the Home Rule. The Home Rule movement immediately acquired an all India character; on account of the situation being mishandled by the bureaucracy, it soon became a force to be reckoned with. In the Bombay Presidency, Tilak was becoming stiff in his opposition. A security proceeding was started against him and the District Magistrate ordered him to execute a personal bond of Rs. 20,000 and furnish two sureties of Rs. 10,000 each as also to be of good behaviour for one year. Lokmaniya Tilak refused to do so. (This order was quashed by the Bombay High Court, on appeal. The action taken by the Government against Tilak was resented by the masses, which also added to the momentum of the national agitation for the Home Rule.)

Both Lokmaniya Tilak and Annie Besant, were astute politicians. They clearly saw the sign of the times. (The War to them was a God-sent opportunity for India to agitate for the Home Rule or self-government.) The British Government needed the co-operation of Indians in the War efforts. Hence that was the time to agitate and force Britain to agree to the Indian demand. They found nothing wrong in utilizing the opportunity offered by the War and the difficulties of the British Government, for extracting political concessions. They were frankly opportunists and believed that there was no such thing as benevolence in politics. No doubt, there were other leaders of the Congress like Mahatma Gandhi, who thought that they should help in the War efforts for altruistic ends, in the interest of democracy and that they should not try to extract

advantages, out of the difficulties of Britain. They wanted to depend on the good faith, sense of justice and fair-play of the Britishers. It was for this reason that they did not join the Home Rule movement. (Events after the War clearly demonstrated, that they were absolutely wrong in the trust they reposed in the British Government during the War.)

THE MESSOPOTAMIAN MUDDLE

Turkey entered the War against the Allies on November 5, 1914. "The Military expedition against Turkey was carried on entirely by the Government of India and its Army, and it was not until February, 1916 that the British War Office assumed control of the operations." Not only was the campaign disastrous; not only was it carried with a degree of Military ineptitude which makes a sorry reading; worst of all, it was conducted with a totally insufficient regard for the medical need of the forces employed, and with an absolute lack of provision for their comforts in general. The facts naturally leaked out and deservedly aroused a burning indignation in England, as a result of which the Parliament appointed in 1916, the Messopotamia Commission, which in May of 1917 submitted a Report, which only confirmed the worst of rumours and suspicions.¹

Two points which were prominently made out in the Report deserve specific mention. The first was that the Government of India was absolutely inefficient in its working. So far, there was an unquestioning faith held by an average Englishman in the administrative efficiency of the Government of India. As a result of the Report, this myth of efficiency was completely shattered. Mr. Montagu, who had already served as a Parliamentary Under-Secretary of State for India, made a scathing criticism of the Government of India in the Parliament and said that it was "too wooden, too iron, too in-elastic, too anti-diluvion to be of any use for the modern purposes we have in view". Here Montagu was evidently hinting at the use to which the Government of India could be put for getting support from Indians in the War efforts. Mr. Josiah C. Wedgwood, a member of the Messopotamia Commission wrote, "My last recommendation is that we should no longer deny to Indians the full privilege of citizenship; but should allow them a large share in the Government of their own country and in the control of that bureaucracy, which in this War, uncontrolled by public opinion, has failed to rise to British standard".² This was the second point, which was made out in the Report; namely that a measure of self-government was necessary to enable India help whole-heartedly in the War efforts. The same feeling was expressed by Montagu in the Parliament, who said, "If you want to use loyalty of the Indian people, you must give them higher opportunity of controlling their own destiny, not merely by

1. Zacharias : *Renascent India*, p. 170.

2. Zacharias : *Renascent India*, p. 172.

Councils which cannot act, but by control, by growing control of the Executive itself". He ended by giving a warning that, "unless you are prepared to remodel, you will lose the right to control the destinies of the Indian Empire". Mr. Chamberlain, the Secretary of State for India at the time, resigned in July, 1917 as the result of this criticism. Mr. Montagu was appointed as the Secretary of State for India. The Messopotamia Report, thus, was the immediate cause of the great Declaration made by Mr. Montagu in the House of Commons on August 20, 1917.

Causes which led to the Declaration : Before explaining the actual Declaration it may be profitable to summarise causes which were responsible for the radical announcement. Firstly, in 1916 the Muslim League and the Congress had united as never before. Secondly, Gokhale and Dadabhai Naoroji had died and the Congress was now practically in the hands of the Extremists led by Lokmanya Tilak and Mrs. Annie Besant. Thirdly, the rift between the Moderates and the Extremists which had occurred in 1907 was closed in 1916. Fourthly, the demand for Home Rule was now unitedly presented by the entire country. Fifthly, the Messopotamia Commission had shown that the Government of India was inefficient and unpopular and a measure of responsible Government was necessary to mobilize public opinion in India in favour of the War efforts. Sixthly, the war near about the middle of 1917 had entered a very critical stage and a radical change in policy appeared to be necessary to avoid rupture with the national forces in India. The Home Rule movement had ignited the people and spread general dissatisfaction among the masses. Seventhly, such a declaration was necessary and in keeping with the declaration of the War aims of the Allies. And lastly, Mr. Montagu became the Secretary of State for India in July, 1917, and held a progressive outlook regarding Indian affairs. He had once said, "The demand that now meets us from the educated classes of India is no more than the right and the natural outcome of our work of the hundred years. Unless we are right in going forward now, the whole of our past policy in India has been a mistake. We believe, however, that no other policy was either right or possible and therefore we must now face the logical consequences. Indians must be enabled in so far as they attained responsibilities to determine for themselves what they want done." Montagu, unlike Lord Morely and Lord Crewe, was not so blind as not to see that the introduction of a responsible form of Government was only a logical consequence of the Reforms of 1909. It was an amazing lack of far-sightedness on the part of Morley and Crewe not to understand such a simple logic.

The actual Declaration : On August 20, 1917 Mr. Montagu made the following Declaration in the House of Commons : "The policy of His Majesty's Government, with which the Government of India is in complete accord, is that of increasing association of Indians in every branch of administration and the gradual

development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the Empire. They have decided that substantial steps in this direction should be taken as soon as possible. I would add that progress in this policy can only be achieved by successive stages. The British Government and Government of India, on whom the responsibility lies for the welfare and the advancement of the Indian peoples, must be judges of the time and measure of each advance and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence could be reposed in their sense of responsibility".

Comments on the Declaration: The Declaration, in the first place, started with the promise that it would be the future policy of the British Government to provide for the increasing association of Indians in every branch of the Indian administration. There was nothing new in this promise. The Government had said so, as far back as 1833, repeated it in 1858 and had been saying so, again and again, since 1861. What was wanted was its actual fulfilment.

Secondly, it was stated that the future policy was "the gradual development of self-government institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire". This was a bold departure from the old policy, and was *the most important part* of the Declaration. It was for the first time declared that the goal was the introduction of the responsible form of government, which meant a government that is responsible to, or removable by, the elected representatives of the people. The goal of the Dominion Status, it was later said by the British Government, was implied in this part of the Declaration. It was a considerable relief for the Indians to know that "substantial step in this direction was to be taken as soon as possible".

Thirdly, it was a sickening addition that the British Government still thought that the responsibilities for the welfare and advancement of the Indian people lay on them. Indians had got sick of hearing it again and again that the Britishers were governing India in the interest of India to discharge, so to say, the "White man's burden."

Fourthly, it was disappointing to note that the British Government would continue to be the sole judge of the nature and time of each advance. By then most of the Indians had come to realise that Swaraj or Home Rule or self-government was the birth-right of Indians. It was disgusting to read in the Declaration that the key to every step towards responsible government would be held by the Parliament. Fifthly, there was a sting in the tail. It was said that the future advances depended on the co-operation received from Indians and the sense of responsibility shown by them. This

amounted to a veiled threat that Indians must gratefully accept the various instalments of responsibility as ordained by the British Parliament, in the absence of which further progress may be checked. In conclusion, we may add that the Declaration, though faulty and hedged around by many limitations, marks a very progressive stage in the British policy towards India. The Moderates welcomed the Declaration as the *Magna Carta* of India. The Extremists regarded the Declaration essentially unsatisfactory, though an improvement on the previous policy of the Government. On the whole, India was satisfied and the growing dissatisfaction and resentment against the Government was somewhat halted.

Material on which Montagu-Chelmsford Report was based :

Some months before his death Gokhale was asked by Lord Willingdon, the Governor of Bombay, to state his ideas regarding further political advance in India. Because of his ill-health Gokhale could write only a rough sketch of the Reforms proposed by him. The document was published in 1917 under the name of "Gokhale's Political Testament", which, according to Zacharias, "became the substance of the Montagu-Chelmsford Reforms".¹ Secondly, in 1916 the Governor-General had sent some proposals for constitutional advance in India to the Home Government, which were regarded unsatisfactory by Indians. The Governor-General had done so without the knowledge of the elected members of the Imperial Legislative Council. When the fact became known, all the 19 elected members, amongst whom there were men like the Right Hon. V. S. Shrinivasa Sastri, Surendra Nath Banerji, Sir Ibrahim Rahmatoola and Mr. M. A. Jinnah drew the famous Memorandum of Nineteen for the benefit of the new Viceroy, Lord Chelmsford. "The Memorandum is an able and reasoned document and contains an important statement of the demands of the Indian people". In the Memorandum the following statement was made : "What is wanted is not merely good government or efficient administration, but Government that is acceptable to the people, because it is responsible to them. This is what India understands would constitute the new angle of vision. If after the termination of the War, the position of India practically remains what it was before and there is no material change in it, it will undoubtedly cause bitter disappointment and great discontent in the country and the beneficent effects of participation in common dangers overcome by common effort will soon disappear, leaving no record behind, save the painful memory of unrealised expectation". It was on the basis of the constitutional provisions of this Memorandum that Congress-League Pact of 1916 was drawn. The Congress-League Scheme of 1916 was rejected by the Government because the proposal made by it were a bit too radical for the Government to accept.

Seed of Dyarchy : One Mr. Curtis of the Round Table Group, London had drawn a scheme of Dyarchy for applying to the Indian

1. Zacharias : *Renascent India*, p. 166.

provinces. In 1915, Sir Charles Duke, who had already acted as the Governor of Bengal, was a member of the Secretary of State's Council. He worked out the scheme in its application to Bengal. A copy of it was given to Lord Chelmsford on his request before he came to India as Governor-General. Mr. Montagu was convinced, before he came to India in November, 1917, that any further constitutional advance in India could only be made on the lines of Dyarchy. Lord Chelmsford kept his knowledge about the scheme of Dyarchy secret till the visit of Lord Montagu. The subsequent visit of Montagu to India, the meetings with the Indian leaders and the examination of witnesses which was conducted along with Lord Chelmsford were thus, at least in some respects, a "stage managed" affair, because Montagu had already made up his mind regarding Dyarchy, which was eventually introduced in India.

Montagu-Chelmsford Report : The Declaration was made in August, 1917. About three months after the Declaration Montagu arrived in India along with a batch of advisers. He came to India fully determined to introduce a substantial dose of responsible government at once. He believed that unless the British Government conceded a substantial measure of responsibility, they would not be true to their words and the Reforms proposed might not be acceptable to Indians. But when he arrived in India, he was sorry to find that the Governor-General, the Governors and the Services were not as liberally inclined as he was. They all wanted him to go slow, rather very slow, in the matter of introducing responsible form of government in India. In his diary, he angrily recorded, "I wish I could get the damned Bureaucracy to realise that we are sitting on an earthquake." The attitude of the authorities in India was depressing indeed for Montagu, but he kept up heart against heavy odds in order to give his own conviction a practical shape as far as he could.

In the company of Chelmsford, Montagu toured various parts of India, met many national leaders, received many deputations, examined many witnesses and considered various proposals for constitutional advance, which were in the field. We have already noted that the scheme ultimately adopted regarding the conferment of responsibility was that of Dyarchy which was propounded by M. Curtis in 1915, and which had already been approved informally by Montagu. Even if we assume that when Montagu arrived in India, his mind was already made up regarding the type of responsibility which was to be introduced in the Provinces, there were many other supplementary proposals, which were to be approved by authorities in India, for which Montagu deserves credit. When Montagu returned to England after the completion of his labours, he was not satisfied with what he was actually able to accomplish. He took consolation by saying, "I have kept India quiet for six months at a critical period of the War ; I have set the

politicians thinking of nothing else but my Mission."¹ Before Montague left India, he met some top ranking Moderate leaders and made himself sure that they would be willing to work the Reforms he was going to propose. He even tried to bring an Association of such men into existence. The Liberal Federal Association was founded a few months later. A Report containing the proposed Reforms was published in 1918 over the joint signatures of Mr. Montagu and Lord Chelmsford.

The Report is regarded as "the first comprehensive study that had yet been made of the whole problem of Indian Government; it took rank at once as a permanent contribution to the science of politics".² The whole Report breathes a healthy belief in the philosophy of liberalism. It is based on the assumption in the famous saying of Gladstone, "It is liberty alone which fits man for liberty".

Main Principles of the Report : The following fundamental principles were laid down in the Report, on which the Reforms were based :—(1) "There should be, as far as possible, complete popular control in Local Bodies, and the largest possible independence for them of outside control."

(2) "The Provinces are the domain in which the earlier steps towards the progressive realization of responsible government should be taken. Some measure of responsibility should be given at once; and our aim is to give a complete responsibility as soon as conditions permit. This involves at once, giving the Provinces the largest measure of independence—Legislative, administrative and financial of the Government of India which is compatible with the due discharge by the letter of its own responsibilities".

(3) "The Government of India must remain wholly responsible to Parliament, and saving such responsibility its authority in essential matters must remain indisputable, pending experience of the effect of changes now to be introduced in the Provinces. In the mean time, the Indian Legislative Council should be enlarged and made more representative, and its opportunities of influencing Government increased".

(4) "In proportion as the foregoing changes take effect, the control of Parliament and the Secretary of State over the Government of India and the Provincial Governments must be relaxed".

Enactment of 1919 Act : A number of special Committees were appointed to work out the details of the scheme, e.g., Financial Relations Committee under the Chairmanship of Lord Meston, the Franchise Committee, the Committee on Division of Functions and the Committee on Home Administration. The Government of India Bill was introduced in the House of Commons in June, 1919

1. Montagu's Indian Diary, p. 288.

2. Coupland : The Indian Problem, Part I, p. 54.

and after the Second Reading, was sent to a Joint Select Committee of both the Houses of the Parliament. The Bill received the Royal assent on December 23, 1919, after it had passed through all the necessary stages in the two Houses of the Parliament separately, elections were held in November, 1920 and the new Legislatures came into existence in January and February of 1921.

PART III

PARTIAL RESPONSIBILITY AND INDIA INSISTENT



GOVERNMENT OF INDIA ACT, 1919

CHAPTER XI

MAIN FEATURES AND HOME GOVERNMENT

The Preamble of the Act : The substance of Mr. Montagu's Declaration of August 20, 1917 was inserted as Preamble to the Act of 1919. The Preamble ran as follows : "Whereas, it is the declared policy of the Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire :

"And whereas, progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken :

"And whereas, the time and manner of each advance can be determined only by Parliament upon whom responsibility lies for the welfare and advancement of the Indian peoples :

"And whereas, the action of Parliament in such matters should be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility :

"And whereas, concurrently with the development of self-governing institutions in the Provinces of India, it is expedient to give to these Provinces in provincial matters the highest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities :

Be it therefore enacted.....as follows :"

The Preamble is of great constitutional importance. It was not repealed by the Act of 1935 also, and thus remained the constitutional law of India till 1947. In the last chapter, we have

already noted the shortcomings¹ of Montagu's Declaration from the Indian point of view, which need not be repeated here. The policy enunciated in that Declaration remained the ultimate objective of the British policy in India till the end of the British rule. The four working principles² on which the Act was based, as laid down by the Montford Report, have already been dealt with in the last chapter.²

MAIN FEATURES OF THE ACT

(i) **Partial Responsibility in the Provinces:** The most important feature of the Act was that it made a part of the Provincial Executive responsible to the Provincial Legislature. The Provincial Executive was divided into two parts—Councillors and Ministers. The Provincial subjects were also marked into two categories—reserved and transferred. The Councillors were placed in charge of the reserved subjects and the Ministers were to run the transferred side. A fundamental departure from the old policy was that Ministers were now made removable by and, therefore, responsible to the Provincial Legislative Council. This was a radical change from the policy of mere association of Indians with the administration, which the British Government had followed for the last sixty years or so. The power of the Provincial Council to control a part of the Provincial Executive was no doubt crippled by many limitations. All the same, the progressive nature of this step cannot be over-emphasized. For the first time, the British Government had admitted the right of Indians, though only in the Provincial sphere, to choose the type of the Executive that they liked. So far, the Indians had been given merely the right to be heard in the Legislatures. For the first time, a part of the Provincial Government was formed by men, who were the elected representatives of the people and responsible to the Legislature, in which a majority of members were elected by the people of the Province. This was the beginning of responsible government in India, which grew to its full stature in 1947.

(ii) **Decentralisation or Relaxation of Control over the Provinces:** Any popular control over the transferred subjects in the Provinces was meaningless unless the Provinces were made at least partially independent of the Government of India. A clear attempt was, therefore, made to relax the control of the Government of India over the Provinces. Statutory Rules were made, for the first time, to separate the provincial and central subjects. In practice, a good deal of autonomy was conceded to the Provinces in the administration of the transferred subjects. Previous permission of the Government of India was no longer required to introduce legislation in a Province on a provincial subject except only in some special

1. See pages 79-80.

2. See page 82.

cases. Provincial budgets were separated from the budget of the Government of India. Some heads of revenue were declared as purely Provincial. The Provinces were given, for the first time, the right of borrowing money and raising taxes. Legally speaking, the overlordship of the Government of India over the Provinces was kept intact. The Government of India remained responsible to the British Parliament for the entire Provincial sphere. But as a result of the Devolution Rules, the Provinces were definitely given some independent sphere of work, where initiative as well as execution was left to them. The control of the Government of India over the Provinces in reserved subjects remained almost as before.

(iii) **Irresponsible Central Government :** The Government of India continued to be irresponsible, i. e., irremovable by the Central Legislature. The members of the Executive Council of the Governor-General were not bound to resign, even when a clear vote of no-confidence was passed against them by the Central Legislative Assembly. They were responsible to the Secretary of State for India and to the British Parliament only for the administration of India. (This was the chief defect of the Act of 1919.

(iv) **More representative and influential Central Legislature :** Although the Central Legislature was not given the power to remove the Central Executive, the capacity of the former to influence the latter was certainly increased. In the popular House at the Centre, out of about 144 members, 103 were elected. There was a majority of elected members, though very small, also in the upper House. The franchise was extended, giving the right of vote to about 10 per cent of the adult population of India. The method of election was direct in case of both the Houses. The votable part of the expenditure of the Government of India was required to be passed by the Central Assembly. (The members could harass the Government by putting questions and supplementary questions. They could pass resolutions and move adjournment motions unpalatable to the Government. They could reject an expenditure asked for by the Government and refuse to pass a Bill as required. No doubt the Governor-General was armed with extraordinary powers in some cases to have his way even against the wishes of the Legislature. But these extraordinary powers could not be exercised too frequently. The Central Legislature was, thus, so constituted that the Government of India, though not responsible to it, became somewhat responsive to popular opinion.

(v) **Extension of Communal franchise :** The venom of communal electorates was injected into the body politic of India under the Morley-Minto Reforms of 1909. Although the Montford Report declared the communal electorates as anti-national, dangerous and disruptive, the system was not only retained for Muslims, it was even extended to the Sikhs. In the Rules that were made to implement the Act, the vicious principle was further extended in the

case of Europeans, Anglo-Indians and Christians in provinces where the influence of these communities could be weighty.

(iv) **Relaxation in the Control of the Secretary of State and the British Parliament** : The Montford Report had recommended relaxation in the control of the Home Government over the Government of India and the Provinces to an extent that was necessary to give meaning and substance to the changes proposed in the Provincial and the Central administrations. Legally speaking, the powers of the Secretary of State for India remained as before. He was still responsible to the British Parliament for the 'superintendence, direction and control' of the *entire* Indian administration. But in practice the Secretary of State and the British Parliament stopped interference in the administration of the transferred subjects in the Provinces. In the administration of the reserved subjects in the Provinces and the central subjects, the legal control remained as before. However, a convention was started that, where the Government of India and the Central Legislature were in agreement, the Home Government would not interfere. The basic assumption of the convention was defective and did not satisfy the progressive opinion in India because the Government of India could not agree, where it had the least suspicion, that the Home Government would not do so. Yet, it was an improvement on the previous position.

HOME GOVERNMENT

The administrative machinery which controlled the political destiny of India from England was called the Home Government. England is the home of the British, hence the phrase. It was an irony of fate that even Indians had to call it so. Till 1784 the Board of proprietors regulated the affairs of the East India Company, through the Court of Directors. In 1784 under the Pitt's India Act, the system of Double Government was set up. The Board of Control which was an instrument of the British Parliament, was established as a supervisory body to exercise day-to-day control over the Courts of Directors. This system continued upto 1858. The defects of this system of Double Government have been noted in an earlier Chapter.¹ From 1858 onward, the Secretary of State for India and the India Council represented, in main, the Home Government of India.

Secretary of State for India : As we already know, the Government of India Act, 1858 made a provision for the Secretary of State for India. He was given the power to 'superintend, direct and control' the *entire* Indian administration and was made responsible to the Parliament for Indian affairs. The Secretary of State was provided with a Parliamentary and Permanent Under-Secretary of State for India. The Parliamentary Under-Secretary acted as a deputy of his chief in the Parliament and represented the Indian administration in the House of the Parliament, of which

1. See page 25

the Secretary of State was not a member and answered questions of the members regarding India. He was a member of the Ministry, though not of the Cabinet. The Permanent Under-Secretary of State for India was the chief administrator of the India Office and provided whatever expert knowledge was needed by the Secretary of State in deciding matters regarding India.

Powers of the Secretary of State for India : The Secretary of State was empowered to "superintend, direct and control all acts, operations, and concerns which relate to Government or revenue of India and all grants of salaries, gratuities and allowances and all other payments and charges, out of or on the revenues of India". The Government of India Act, 1915 had provided : "The expenditure of the revenues of India, both in and elsewhere shall be subject to the control of the Secretary of State-in-Council ; and no grant or appropriation of any part of those revenues, or any other property coming into the possession of the Secretary of State-in-Council by virtue of the Government of India Act 1858, or this Act shall be made without the concurrence of a majority of votes at a meeting of the Council of India."

The Montford Report testified that the powers of the Secretary of State were 'very large', and to describe all his specific powers "would be a long task". "All projects for legislation, whether in the Indian or the Provincial legislatures, were sent to the Secretary of State for approval in principle. Before him were laid all variations in taxation or other measures materially affecting the revenues and in particular the customs ; any measure affecting the currency operations or debt ; and generally speaking, any proposals which involve questions of policy or which raise important administrative questions or involve large or novel expenditure. The construction of public works and railways, the creation of new appointments of a certain value, the raising of the pay of the others or the revision of establishment beyond a certain section ; grants to Provincial Governments or loans to Native States ; large charges for ceremonials or grants of substantial political pensions ; large grants for religious or charitable purposes, mining leases and other similar concessions and additions to the military expenditure, are only some classes of the public business in respect of which the Secretary of State had felt bound to place close restrictions upon the powers of the Governments in India."¹

It may be added that the highest appointments in India were made with his consent if not on his recommendation. The superior Services like the Indian Civil Service were under the control of the Secretary of State-in-Council. There was nothing in the Indian administration, which he could not interfere with. These vast categories of powers account for his description as 'the Great Mughal of the India Office'.

1. Montford Report ; p. 22

Under the Act of 1919, the general power of the Secretary of State to 'superintend, direct and control' Indian affairs was retained; but in order to fit him into the frame-work of Dyarchy, a rule was made under the Act of 1919 to the effect that the interference of the Secretary of State in the administration of the transferred subjects in the Provinces, should be reduced to the minimum. In the administration of the Central subjects and the reserved subjects in the Provinces, an official undertaking was given to observe a convention, that in any matter of purely Indian interest, when the Government of India and the Indian legislature were in agreement, the Secretary of State would not, ordinarily, interfere. The full implications of this convention will be explained in a later chapter. In the actual working of the Act, the interference of the Secretary of State in the transferred subjects almost stopped; but in the remaining sphere, his control remained, mostly, as before 1919.

Home Government and the Government of India: The legal supremacy of the British Parliament and its mouth-piece, the Secretary of State, over the Government of India was never a matter of doubt. Lord Mayo's Government was clearly told by the Secretary of State, "The final control and direction of the affairs of India rest with the Home Government and not with the authorities in India.....That Government (Home) must hold in its hands the ultimate power of requiring the Governor-General to introduce a measure, and of requiring also all the members of his Government to vote for it."¹ After the opening of the Suez canal and the completion, in 1870, of a direct telegraph line between India and England, means of communication between the two countries became easy and the interference of the Secretary of State in Indian affairs increased a good deal. The Government of India no longer could present its policy and measures as *fait accompli* and had to consult the Home authorities beforehand. Lord Ripon complained of and Lord Curzon resented the over-interference of the Home Government. Lord Minto was not happy under Lord Morley. Lord Morley claimed and exercised the right of direct correspondence with any official in India even in public matters. The Government of India often complained that they were being treated as mere agents of the Home Government. The Governor-General who differed from the policy of the Secretary of State had no alternative but to resign. It is a legal truism that "India was governed from White Hall, rather than from Delhi."

But in actual practice, the Governor-General, being the man on the spot, a good deal of power fell into his hands. Moreover, the comparative powers enjoyed by the Secretary of State and the Governor-General depended on the personality of the two officers. Strong Secretaries succeeded in running the Indian administration

1. Montford Report p. 20.

very much in their own way. The weak were content to follow the advice of the man on the spot.

The India Council : We already know that the India Council was created along with the Secretary of State in 1858 to assist him in controlling the Indian administration. At the time of its creation, the Council was given a permanent and independent status and was endowed with some statutory powers. It has also been pointed out earlier that such a body went ill with the responsibility of the Secretary of State to his own party, to his Cabinet colleagues and above all to the House of Commons for the entire Indian administration. The logic of parliamentary institutions and subsequent changes in the composition and method of its appointment, etc. reduced the India Council to a position of inferiority as compared with the Secretary of State.

Subsequent changes : By the Act of 1869, the Secretary of State was given the exclusive right to fill all vacancies in the Council. The tenure was fixed for 10 years instead of for life and the Secretary of State was given the right to re-appoint an old member for 5 additional years in public interest. The Council lost the right of making appointments of the members of the Councils of the Governors and the Governor-General. In 1907 the number of the members of the Council was required to be between 10 to 14. The tenure of service was reduced to 7 years. At least 9 members were expected to be such as must have served in India for 10 years and must not have left India more than 5 years before the date of their appointment. The salary was reduced to £ 1000 per annum.

Appointment of Indians to the Council : As there were no other restrictions upon the choice of the Secretary of State, Mr. Morley appointed two Indians, i. e., Mr. K. G. Gupta and Mr. Syed Husain Bilgrami as members of the India Council in August, 1907. This was done to implement the policy, announced by the Government in 1833 and 1858, of admitting qualified Indians to higher jobs and to associate them with the administration. Mr. A. Chamberlain added a third Indian member to the Council on 26th June 1917. The appointment of Indians to the Council was, no doubt, a great concession to the Indian sentiment. But as they were in a miserable minority and their appointment was made by the Secretary of State, it is doubtful if they were able to exercise any effective check on the Secretary of State.

India Council after 1919 : The Act of 1919 fixed the number of its members between eight and twelve. The salary of the members was again raised to £ 1200 a year and the Indian members were given £ 600 extra to compensate them for running two houses—one in India and the other in England. Instead of nine, half the members were required to have served or resided in India for 10 years previous to their appointment. To ensure fresh experience

and to spare the Indian members from the necessity of living too long a period in England, their term of office was reduced from seven to five years. The Council was to meet at least once a month instead of once a week as required before. The Secretary of State was authorized to frame rules for transacting the business of the Council. The statutory quorum fixed for the meetings was dropped and the Secretary of State was authorized to fix any quorum that he liked. The concurrence of a majority of members of the Council was made necessary for : (i) grants or appropriations, i. e., expenditures of any part of the revenues of India ; (b) entering into contracts on behalf of the Government of India ; and (c) making of rules and regulations governing conditions of employment with regard to all-India Services.

Net result of the changes : As a result of these changes, the India Council was gradually relegated to a mere advisory body, except in the three matters mentioned above, wherein a majority decision was required. The right of making appointments and reappointments, rules of business, reduced tenure and the flexibility in the number of members gave the Secretary of State a controlling position in the Council. "The direction of affairs from England now became direction by the Secretary of State".

Criticism of the Council : The Indian Council had always remained an eye-sore for Indians for the following reasons : In the first place, as originally introduced, "the intention of the British Parliament was to create in the India Council a body strong enough to safeguard the interests of the people of India ; the government of India was to be spurred on by it to measures of progress, civilization and prosperity of India ; the Secretary of State was to be restrained by it from any encroachment upon the rights of the people of India and the revenues". But after 1869 the Council became too weak to be able to fulfil such functions. Secondly, the Council came to be filled with members, who had essentially a conservative, if not a reactionary outlook. Its personnel consisted mostly of retired Servicemen from India, who were expected to guide the rulers of India as to the manner in which the Indian administration should be carried on. These retired Servicemen, as a class, had seldom taken kindly to Indian aspirations for freedom. They often asserted, on the basis of their personal knowledge, that Indians were not fit for freedom. Instead of spurring on the Secretary of State for an enlightened and progressive policy regarding India, they had generally been acting as a brake on the Secretary of State and had usually cautioned and warned him against reforms. Thirdly, the grant of political rights to Indians necessarily implied the lessening of the British control. A self-governing India and a body like the India Council fitted ill, together. As Indians were visualising the possibility of Dominion Status for India, they often demanded the earliest abolition of the Council. And finally, till 1919 the expenses of the India Council were charged to the Indian

Government. This was an injury added to insult. Here was an institution, which was despised by Indians and of which they urged abolition, and yet they were made to pay for it on the excuse that it was for the good of India ! The Act of 1919 partly remedied this grievance.

On the basis of the above-mentioned reasons, in the Congress-League pact of 1916, it was demanded that the India Council should be abolished. The Crewe Committee also recommended its abolition. Even as early as 1889, Sir Willian Wedderburn said, "The official administrators (of India) who used to be viewed with jealousy have now been admitted into the innermost sanctum of authority, and as Council to the Secretary of State, formed a secret court of appeal for the hearing of all Indian complaints. They first decide all matters in India, and then retire to India Council at Westminster to sit in an appeal on their own decisions. As a method of control, it is a mockery, a sham and a delusion".

The High Commissioner for India : Before the passing of the Act of 1919 the Secretary of State for India used to perform some functions on behalf of the Government of India, which were called the agency functions. Such functions included the buying of stores for the civil and military needs of the Government of India from other countries, payment of pensions to retired officers from India and looking after the interest of the Indian students prosecuting their studies abroad. In the matter of stores purchase, it was generally complained and reasonably so by Indians that the Secretary of State often performed this function, keeping in view the economic interest of England rather than that of India. Stores were purchased mostly from England to help the manufacturers there and not from the cheapest and the best market in other countries. Moreover, no attempt was made to encourage Indian industries by following a judicious and sympathetic system of purchasing with a view to help the Indian Industry.

A High Commissioner is appointed by each of the Dominions, who is stationed at London, to carry on these functions on behalf of that Dominion. These officers are appointed by the Dominions and are responsible only to them. They perform the functions of store purchase, etc., on behalf of their governments in the sole interest of their own country. Indians had generally demanded the appointment of a High Commissioner on the lines of the Dominions. In 1919, when the Crewe Committee was appointed to look into the re-organisation of the India Office, they recommended the appointment of a Commissioner for India, to be appointed by and responsible to the Government of India alone, to be entrusted with all the agency functions. So a High Commissioner for India was appointed under the Act of 1919—thus fulfilling a legitimate demand of the Indians. But Indians were never fully satisfied with the way

the High Commissioner conducted himself. This was because under the Act of 1919, the High Commissioner was to be appointed by the Governor-General-in-Council, to whom alone the High Commissioner was responsible. The Governor-General-in-Council was responsible to the Secretary of State and the British Parliament, and not to the Indian people. Only such men were appointed to this post, as would not fail to give due importance to the interests of the British trade and manufacture, while making purchases on behalf of the Government of India.

CHAPTER XII

RESPONSIVE AUTOCRACY AT THE CENTRE

The basic principle for constituting the Central Government according to the Montford Report, as already stated, was : "*The Government of India must remain wholly responsible to Parliament, and saving such responsibility, its authority in essential matters must remain indisputable, pending experience of the changes now to be introduced in the Provinces. In the meanwhile the Indian Legislative Council should be enlarged and made more representative and its opportunity of influencing the Government increased.*"¹ According to this formula the Central Government remained responsible to the British Parliament alone. It was not answerable to the people of India through their representatives in the Central Legislature. This was the most objectionable feature of the Government of India from the view point of the progressive elements in the country. But the new Central Legislature was so constituted and its functions were enlarged in such a way that it certainly was in a position to influence the working of the Government in many ways.

GOVERNOR-GENERAL OF INDIA

At the apex of the Indian administration stood the Governor-General of India. The powers of the Government of India were vested in the Governor-General-in-Council, which meant the Governor-General and his Executive Council. The Governor-General was however head and shoulders above the Council. The Governor-General continued to be responsible to the Secretary of State for India and the British Parliament for the peace and tranquillity of the whole of India. Such an over-all responsibility could only be discharged by his possessing an over-ruling power over every aspect of the administration. From the very day of the creation of this office, he was appointed for five years. His tenure could be curtailed or extended. He was generally appointed from the British public life. The office of the Governor-General was treated as a non-party office. Its holder was not changed, when there was a change of the Government in England. Till the passing of the Leave of Absence Act, 1924, he was not allowed to go on leave outside India. After 1924, he became entitled to four months leave outside India.

1. Montford Report : p. 94.

POWERS OF THE GOVERNOR-GENERAL

The Governor-General possessed a formidable set of powers. He was an autocrat, with no political responsibility to the people over whom he was called upon to rule. After the Declaration of Queen Victoria in 1858, he came to be known as the Viceroy. He was thus not only the chief administrator of India, but he was also the representative of the British Crown in India. His powers may be classified as follows :—

Executive Powers : The Governor-General possessed the power of "superintendence, direction and control" over the entire Indian administration. This power was formally vested in the Governor-General-in-Council. The Governors of 8 Provinces out of 11, the members of his Executive Council, the High Court judges the Advocate General, etc., were all appointed on his recommendation. He possessed over-ruling power against a majority decision of his Councillors. The higher Services working under the Central Government as well as in the Provinces were under his control. The Secretaries of the Government Departments under the charge of the Executive Councillors were bound to keep him informed about the work of their departments. His position as the representative of the Crown gave him a unique administrative position. He was directly in charge of the Foreign Affairs and the Political Departments. This gave him control over India's relations with outside powers and control over the Indian States, whose population was roughly about one-fourth of the total population of the British India. He was not subject to the jurisdiction of the Courts in India, and was given the right of pardon and reprieve. He conferred Titles and Honours.

Legislative Powers : His Legislative powers were equally enormous. He could summon, adjourn and dissolve both Houses of the Central Legislature. He could also extend their life as was done during the Second Great War. He could address both Houses and for that purpose require the attendance of their members. Every Central as well as Provincial Bill required his assent for becoming a Law. In some cases his previous assent was required for introducing a bill in the Central Legislatures as well as in Provincial Legislatures. He could disallow any question or supplementary question in the Legislature or the introduction of any bill, if he thought that the same was prejudicial to the peace and tranquillity of India or any part thereof. He could, similarly, stop the discussion of any resolution or adjournment motion. He could send back a bill for reconsideration and could reserve it for the consideration of His Majesty's Government. The Governor-General also exercised some extraordinary legislative powers, given below :

(a) **Power of Certification :** When either Chamber of the Indian Legislature refused leave to introduce a bill or failed to

pass it in the form recommended by the Governor-General, the Governor-General could certify that the passing of the bill was essential for the safety, tranquillity or interests of the British India or any part thereof, after which the bill became an Act in the form recommended by the Governor-General, if passed by the Second Chamber on his assent and if not passed by either House on his signing it. Thus the Governor-General was in a position to place on the statute book any Law, which was opposed by either or both the Houses. The Princes Protection Act of 1923 and the Finance Bill of 1925, in which Salt duty was doubled, were enacted by the Governor-General by the use of this power of certification. Every such act made by the Governor-General required to be laid before each House of the British Parliament and required the assent of His Majesty-in-Council before it became effective. But, if in the opinion of the Governor-General a state of emergency existed, which justified its immediate introduction, the certified Bill became an Act forthwith subject to the power of disallowance by His Majesty-in-Council. It may be noted that the power of certification was meant to be used, when the Legislature was in session and was not willing to pass a bill as desired by the Governor-General.

(b) Power to make Ordinances : The Ordinance-making power was to be used when the legislature was not in session and in the opinion of the Governor-General, an urgent piece of legislation was required. During the civil dis-obedience movements, the use of ordinance-making power by the Governor-General became a familiar instrument through which the Executive armed itself with extraordinary powers to suppress the popular movements. The Governor-General was given the power, in cases of emergency, to make or promulgate Ordinances for the peace and good government of the British India or any part thereof. Such an Ordinance was not valid for more than six months at a time, but could be extended for the same period on its expiry.

Financial Powers : The financial Powers of the Governor-General were also great. The budget could be presented to the Legislature only after his approval. No item of expenditure could be recommended to the Legislature unless approved by him. Some items were made non-votable by the Act itself. Apart from these, he could also place any other item in the non-votable list. Thus the final decision regarding votable and non-votable items lay with him. About 85% of the expenditure was non-votable. The remaining 15% was voted upon by the Legislative Assembly as 'demands for grants.' But here also the Governor-General possessed the right of restoring a refused or reduced grant, by stating that the required expenditure was necessary to discharge his responsibility for the efficient administration of the department concerned. He could also provide money for any other item of expenditure, by certifying that the expenditure was necessary for the proper discharge of his responsibilities.

From the long list of powers described above, it is amply clear that the powers of the Governor-General were real and extensive. Most of the powers described above were possessed by the Governors-General even before the Act of 1919, except the powers of restoring cuts, certifying bills and promulgating Ordinances, which may be described as special or extra-ordinary powers. These powers were given to the Governor-General for the first time. Under the Act of 1909, there was an official majority in the Imperial Legislative Council, which the Governor-General could always use to get any bill or grant for expenditure passed. This was not so after the 1919 Reforms. The Central Legislature and especially the Legislative Assembly had a clear majority of elected members who, it was feared, might at any time refuse to pass a bill or an item of expenditure which the Governor-General thought necessary. The framers of the Act, therefore, were convinced that these special powers were absolutely essential.

THE EXECUTIVE COUNCIL

It is usual to provide every Chief Executive with a set of advisers. When the office of the Governor-General was created under the Regulating Act of 1773, he was provided with a Council to assist him. Originally the idea was to set up a collegiate executive, where power was held by all jointly and the Governor-General was not given a dominating position. We know Warren Hastings was not given the power to go against a majority decision of his Councillors. This position proved unworkable in practice. The power of over-ruling a majority decision of the Councillors was first given to Lord Cornwallis and was later made available to all Governors-General, as it soon became clear that the Governor-General could not discharge his great responsibilities without this power. Various changes were introduced from time to time in the position and powers of the Councillors. One result of the constitutional changes was to subordinate the Council, more or less completely, to the will of the Governor-General.

Various factors helped in making the Councillors subservient to the will of the Governor-General. They were appointed on his recommendation. He could recommend their re-appointment. The Governors of eight provinces were generally appointed from the senior Service-men and the Executive Councillors looked to the Governor-General for this elevation. The power of over-ruling a majority decision, which was known as the veto-power, was sufficiently salutary to compel the members not to go against the wishes of the Governor-General.

Position under the Act of 1919: The Act made some changes in the composition of the Council. No limit was fixed on its membership, which was left to be determined by His Majesty from time to time. Three members of the Council at least were required to be persons who had been not less than ten years in the service of the Crown in India. One was required to

be a Barrister of England or of Ireland or an Advocate of Scotland or a Pleader of a High Court in India of not less than ten years standing. The qualifications of other members were left to be settled by Rules to be framed under the Act, if necessary. There was no bar to all the members being Indians. In practice, however, only one Indian was appointed its member since 1907 and three from 1921 to 1941. The Executive Councillors were appointed for five years. There was no bar to their re-appointment. They were appointed by His Majesty's Government on the recommendation of the Governor-General. The salaries of the Councillors were charged on the Indian revenues and were included in the non-votable items.

Method of work : The Councillors worked by the portfolio system. Each member was put in charge of one or more Departments. Portfolios or Departments were distributed among the Councillors by the Governor-General. Ordinary and routine work regarding a Department under the charge of a Councillor was carried on by him alone. But matters of importance and cases where more than one Department was concerned were brought for decision before the joint meeting. Such meetings were generally held weekly and the Governor-General presided over them. The Governor-General was empowered to nominate an Executive Councillor to preside over the meetings in his absence. The presiding officer possessed a casting vote in case of a tie, i.e., equality of votes on either side. The rules of business, agenda and place of meeting, etc., were all decided by the Governor-General. In these meetings, ordinarily, decisions were taken by the majority rule. The Governor-General, as already stated, possessed the right of over-ruling a majority decision of the Councillors in case he felt that this was necessary for the peace, tranquillity and good government of India or any part thereof. This power was seldom exercised in practice. It was, in fact, exercised only once by Lord Lytton to reduce cotton duties. Its mere possession in the hand of the Governor-General was sufficient to make the Councillors fall in line with the views of the Governor-General.

Nature of the responsibility of the Executive Councillors : The members of the Executive Council were responsible, along with the Governor-General, for the peace, tranquillity and good government of the whole of India to the Secretary of State and the British Parliament. The Councillors held office during the pleasure of the Crown, which in fact meant the pleasure of the Governor-General. He could advise the Crown at any time for the removal of any of them, and such an advice would be accepted. Thus in practice, the Executive Councillors were responsible to the Governor-General for their acts of omission and commission. They were made *ex-officio* members of either the Central Legislative Assembly or the Council of State and enjoyed the right of participation in both Houses. They were expected to answer questions and supplementary questions of the members of the Legislature. The Legislature could move vote of censure against them. But they were not removable by the Assembly. Even a majority verdict of the

Assembly against, them involved no obligation on their part to resign. The Councillors were not made collectively responsible for the work of the Government. No such collective responsibility was possible, because they were selected from different categories of persons. They were in no sense the colleagues of the Governor-General. Their position was more or less like that of Advisers or Secretaries of the Departments.

Secretaries of the Councillors : Every Government Department was headed by a Secretary who generally belonged to the Indian Civil Service or other all-India Services. The Secretary was required to assist the Executive Councillor in the discharge of his administrative duties. These Secretaries possessed direct access to the Governor-General and were to keep him informed regarding the important work in their Departments and especially those matters which vitally affected the responsibilities of the Governor-General. The direct access of the Secretaries to the Governor-General created a very awkward position for the Executive Councillors. A Secretary could prejudice the mind of the Governor-General before an Executive Councillor had an opportunity to explain his point of view. This anomalous position of the Secretaries was bitterly resented by the Indian members of the Executive Council. When Mr. Jawahar Lal Nehru formed the interim Cabinet in 1946, one of the first acts that he did was to abolish the right of direct access of the Secretaries to the Governor-General.

Powers of the Executive Council : Under the Act of 1919 the 'superintendence, direction and control' of the civil and military affairs of the Government of India was vested in the Governor-General-in-Council. All powers of the Government of India belonged to this body and were exercised in its name. All decisions taken on behalf of the Government of India were the decisions of the Governor-General-in-Council. The Provincial Governments were duty-bound to obey this authority and were required to keep it constantly and diligently informed about all matters of importance, "subject to restrictions imposed by the Secretary of State-in-Council." The Governor-General-in-Council was empowered to "purchase, sell and mortgage property, to borrow money and to execute assurances for the purchase." The same authority could, with the previous sanction of His Majesty, constitute a new Province under a Governor or Deputy Governor or Lieutenant Governor, could declare any tract to be backward and make special arrangements for its administration, could create Executive Councils for Governors' Provinces and determine the number and qualifications of their members, could by notification take any part of British India under the immediate authority and management of itself, and could alter the boundaries of Provinces. It could provide Legislatures for Governors' or Commissioners' Provinces. It could alter the local limits of the jurisdiction of Indian High Courts, could appoint additional judges to the High Court, for a period not exceeding two years, and appoint a judge to act as the Chief

Justice when a vacancy occurred and till the vacancy was permanently filled." Almost all powers of the Government of India belonged to that corporate body known as the Governor-General-in-Council. But the position of the Governor-General was so dominating in the Council that it will not be wrong to state that the Governor-General himself could exercise all these powers, whereas the Executive Councillors possessed the right to give him advice, which the Governor-General might accept or reject.

Membership till 1941 : On the eve of the introduction of the Act of 1919, the Executive Council consisted of eight members including the Governor-General and the Commander-in-Chief. This number continued till 1941, when the Council was expanded. Before expansion, the work of the Council was divided into the following Departments : (i) foreign and political, (ii) army and defence, (iii) home, (iv) finance, (v) communications, (vi) legislative, (vii) education, health and lands, and (viii) commerce and labour.

THE CENTRAL LEGISLATURE

The Central Legislature consisted of two Houses—the Council of State and the Legislative Assembly. The Second Chamber was an innovation, so far as India was concerned. This brought India in line with the Western countries, where the Legislatures usually consist of two Houses.

THE LEGISLATIVE ASSEMBLY

Composition :¹

Constituency	Nominated		Elected						Total
	Officials	Non-officials	Non-Muslims	Muslims	Sikhs	Europeans	Land-holders	Indian Commerce	
Govt. of India	14	5	...	...	...	...	...	...	19
Madras	2	...	10	3	...	1	1	1	18
Bombay	2	1	7	4	...	2	1	2	19
Bengal	2	2	6	6	...	3	1	1	21
United Provinces	1	2	8	6	...	1	1	...	19
Punjab	1	2	3	6	2	...	1	...	15
Bihar & Orissa	1	1	8	3	...	...	1	...	14
C.P. & Berar	1	1	3	1	...	...	1	...	7
Assam	1	...	2	1	...	1	...	...	5
Burma	1	...	3	...	...	1	...	...	5
Delhi	...	...	1	...	...	...	...	...	1
Ajmer-Merwara	...	...	1	...	...	...	...	...	1
N.W.F. Province	...	1	...	...	...	...	...	...	1
Total	26	15	52	30	2	9	7	4	145

1. Simon Report, Vol. I, p. 168.

From the above chart, it will be seen that the total strength of the Legislative Assembly, when the Simon Commission reported, was 145, out of which 41 were nominated members and 104 elected. Amongst the nominated members, 26 were officials and the rest non-officials. Thus, there was an overwhelming majority of elected members. The officials were included to represent the Government in the Legislature. The non-officials were supposed to represent those interests and classes which could not be represented through elections.

Constituencies and System of Election : Under the Act of 1909, the system of election to the Imperial Legislative Council was indirect. Under this Act, the system of election was made direct. Separate electorates were not only retained for Muslims, but were extended to Sikhs and Europeans. Special constituencies were created for Landlords and Indian Commerce. Depressed classes, Anglo-Indians, Indian Christians and Labour were given representation through nomination. The Provinces were allotted seats in the Legislative Assembly in proportion to their importance and population. The voting qualifications for the Assembly varied from Province to Province. These were mostly based on low property qualifications. In the Provinces, those who were assessed to pay income tax or who paid land revenue or rent or municipal tax above a fixed minimum had the right to vote. In spite of low property qualifications, the total number of voters for the Assembly in 1934 was 1,415,892 in the whole of the British India. Thus only about 10% of the total adult population had the right to vote for the Assembly, which was the popular House of India.

Presiding Officers and Duration : In the Imperial Legislative Council under the Act of 1909, the Governor-General was the *ex-officio* President. It is a time-honoured privilege of Legislative Houses to elect their own presiding officers. Under the Act of 1919, for the first four years, the Presiding Officer of the Assembly was nominated by the Governor-General. This was done to secure the services of some renowned parliamentarian for the difficult task. Sir Alexander Whyte was nominated as the first President. After four years, the President was to be elected by the Assembly. Mr. V. J. Patel was the first elected President, who was subsequently re-elected the second time. The Vice-President was elected from the very beginning. The salary of the nominated President was to be fixed by the Governor-General and that of the elected President by the Assembly. The life of the Assembly was three years. This period could be extended or curtailed by the Governor-General, as was done during the Second World War when the House, elected in 1936, continued to work till the end of the War in 1945.

POWERS OF THE ASSEMBLY

The powers of this body could be divided into the following three parts :—

(a) **Legislative Powers :** The Assembly had the right to pass laws on subjects enumerated in the central list, regarding all persons in British India. It could also legislate on subjects in the provincial list, with the previous approval of the Governor-General. It should, however, be clearly understood that the Assembly was not a sovereign law-making body. Its legislative powers were limited in many ways. It had no power to change the Constitution, for which only the British Parliament was competent. It had no power to make laws affecting any Act of the Parliament or the power of the Secretary of State-in-Council to raise money in the United Kingdom for the Government of India or affecting the authority of the Parliament or to make any law, empowering any Court other than a High Court to sentence to death any of His Majesty's subjects born in Europe or abolishing any High Court. Its legislative powers were much limited by the legislative powers possessed by the Governor-General, which have already been detailed.

(b) **Financial Powers :** Money bills could originate only in this House. The Finance Bill, which contained items of revenue or income which was to be raised for the expenditure of the Government for the financial year, was first passed by this House and was then voted upon by the Council of State. The expenditure side of the budget was divided into votable and non-votable items. The non-votable items, covering about 85% of the expenditure, included : interest and sinking fund charges, salaries and pensions of persons appointed by or with the approval of His Majesty or the Secretary of State, salaries of Chief Commissioners, expenditure on Ecclesiastical, Political and Defence Departments. On the non-votable items, the Assembly had no right to vote. These items could, however, be discussed. The votable items were submitted to the vote of the Assembly. While voting, the Assembly could assent to, reduce or refuse an item in the grants. It had no power to increase or alter the destination of a grant.

(c) **Executive Powers :** The Government of India was not made responsible to the Assembly under the Act of 1919. The Assembly, however, possessed certain powers, by which it could influence the working of the Executive on the lines of legislative Houses in a parliamentary Government. Members could ask questions and supplementary questions from the Executive Councillors. They could move resolutions, recommending a particular course of action to the Government. They could move adjournment motions for discussion in the House on matters of urgent public importance. The Assembly could pass a vote of censure against the Government. The Assembly had, however, no power to compel the Government to follow its wishes. A vote of censure passed by it involved no responsibility on the part of the Government to resign.

Defects of the Assembly : The Assembly was to serve as the popular House in India. The greatest limitation on its power was that the Government was not responsible to it. The method of its

election was poisoned with communal electorates. Its members were divided on the basis of 'classes and interests', which made it difficult, for even the elected members, to unite and present a common front to the Government. The nominated block generally voted with the Government. The legislative and financial powers of the Governor-General were also hindrances in its way. The total number of voters, whom the Assembly represented was only 10% of the adult population of the British India. The Council of State, which was an oligarchical House and a reactionary body, was given almost equal powers.

Merits of the Assembly : It was for the first time that an elected majority was provided in the Central Legislature and the demand for direct election was conceded. The power of voting grants was newly given. No doubt, it had no power to oust the Government, but its capacity to influence the Government was considerable. We shall presently see how, in actual working, the Government became responsive to the wishes of the Assembly. Its wishes were ignored by the Government only in those matters where Imperial interests were at stake.

THE COUNCIL OF STATE

Composition :¹

Constituency	Nominated		Elected					Total
	Officials	Non-officials	Non-Muslims	Muslims	Sikhs	Non-Communal	European Commerce	
Govt. of India	11	...	...	...	...	...	...	11
Madras	1	1	4	1	...	...	...	7
Bombay	1	1	3	2	...	...	1	8
Bengal	1	1	3	2	...	...	1	8
United Provinces	1	1	3	2	...	...	...	7
Punjab	1	3	1	2	1	...	...	8
Bihar & Orissa	1	...	2	1	...	...	...	4
C. P. & Berar	...	2	...	...	...	1	...	3
Assam	...	...	...	1	...	...	...	1
Burma	...	...	...	...	...	1	1	2
N.W.F. Province	...	1	...	...	...	...	...	1
Total	17	10	16	11	1	2	3	60

From the chart, it will be seen that the total strength of the Council of State was 60. Out of this, 33 were elected members and the rest nominated. Out of the nominated members, 17 were officials and the rest non-officials.

1. Simon Report, Vol. I, p. 167.

Constituencies and method of election, etc. : The object of the Council of State was to act as a revising chamber to the Lower House. It was to curb radical and revolutionary tendencies in the House. Its constitution was so framed as to make it a representative House of big landlords, capitalist classes and mercantile aristocracy. Very rich persons only had the right to vote for electing its members. The voting qualifications varied from Province to Province. The property qualifications for a voter were so high that there were only 17000 voters in the whole of the British India in 1925, for electing all the 33 members. The number remained near about that figure throughout. Communal electorates were introduced even here for Muslims and Sikhs. Special constituencies were created for Europeans and some non-communal interests. Apart from property qualifications, certain personal qualifications also entitled a man to have the right of vote, e. g., past or present tenure of office in a local body like Presidentship and Vice Presidentship of Municipalities and Local Boards, past or present University distinction like a Fellowship of a University, holding of title of literary distinction. The life of the Council of State was 5 years. Its President was nominated by the Governor-General. Till very recently, he was invariably an official. Later, non-officials were nominated.

POWERS OF THE COUNCIL OF STATE

Legislative Powers : The Council was given almost co-equal powers with the Assembly. No bill could find a place on the Statute Book unless it was passed by it. Its legislative powers also extended to those spheres on which the Assembly was competent to legislate. Limitations on its powers were the same.

Financial Powers : The budget was presented to the Council of State on the same day on which it was presented to the Assembly. The Council had the right to have a general discussion on the budget and on the financial policy of the Government. It had, however, no right to vote on grants, which was an exclusive privilege of the Lower House. The revenue raising proposals for the year contained in Finance Bill were first debated upon and passed in the Assembly. The Finance Bill was then sent to the Council of State for approval. The Council had the power of amending or even rejecting it. When a Finance Bill was rejected or amended in a manner unacceptable to the Assembly, it could become a law only with the help of the special powers of the Governor-General. The Council had no power to originate money bills. It may be noted here that the financial powers of the Council were less than those of the Assembly, but they were far more than similar powers possessed by the House of Lords in England.

Executive Powers : Just like the Assembly, the Council of State had various powers of influencing the Executive, e.g., the power

of asking questions and supplementary questions, the power of moving resolutions, adjournment motions and the power of passing votes of censure against the Government. Because it was a House representing vested interests, the Government paid scant attention to its few protests against the Government.

Criticism of the Council: The Council was a bulwork of conservatism and hence it remained a target of criticism at the hands of progressive sections of India. The nominated block generally voted with the Government. As the elected members belonged to vested interests and capitalist classes, they also often sided with the Government. The result was that the Government generally could get, whatever laws it liked, passed by the Council and it often obstructed progressive legislation coming from the Lower House. In 1924, the Government proposed 100% increase in salt tax. This item was disallowed by the Assembly. The Bill was later sent to the Council of State with the recommendation that the item should be passed and the Council had no objection in doing so. Similarly, the Princes Protection Bill, wherein stringent measures were provided to suppress movements in India spreading dis-affection against the Indian Princes, was refused leave for introduction by the Assembly. The Governor-General sent the Bill to the Council of State with the recommendation that it should be passed. This was also done. In short, on crucial occasions of conflict between the Assembly and the Government, the Council threw its weight on the side of the Government, which made it a suspect in the eyes of nationalist forces.

Secondly, the Council was denied the privilege of electing its own President, which is a time-honoured privilege of Legislative Houses. Thirdly, it also suffered from the defect of communal electorates. Fourthly, the number of voters in the whole of British India, who elected its 33 members, was only 17000, which is an eloquent testimony to its unrepresentative character. And lastly, its financial powers were far more than are usually given to Upper Houses. The House of Lords in England possesses only a suspensory votes for one month over Money Bills, whereas the Council of State could amend and reject proposals for raising revenues in India. This gave it a control over the Finance Bill, which should not have been given to it.

Conflict between the two Houses: Conflicts are bound to arise between Houses, where there is bi-cameralism, especially when they represent two different types of electorates and interests. Methods were, therefore, provided to iron out differences between the two Houses. When a Bill was passed by one House and not passed by the other House within 6 months of its passage in the originating House, the Governor-General could call a Joint Sitting of both the Houses where the opinion of the majority of the total members of both Houses decided the issue. As the number of the members of the Assembly was far greater than that of the Council

of State, the Assembly was evidently at an advantage in a Joint Sitting. Moreover, when a Bill was passed by one House and rejected by the other, the Governor-General could make it a law by his power of certification.

Influence of the Central Legislature: The Central Legislature created under the Montford Reforms, no doubt, suffered from many limitations. Despite many restrictions on its powers, the Central Legislature was so constituted and its powers so enlarged that it was placed in a position to influence the Government in some important matters. Elected majorities were provided in both the Houses. In the Assembly the proportion of the elected members was more than three to one. The Government of India had to come to the Legislature for getting all types of legislation enacted, which the Government deemed essential. A part of the expenditure of the Government required the approval of the Assembly, which obliged the Government to pay heed to its criticism. No doubt, the Governor-General possessed the power of enacting a bill not acceptable to the Legislature and of restoring reduced or refused grants, but these were in the nature of extraordinary powers, which could not be used too frequently. The Central Legislature of 1921-23, in which the Liberals preponderated, was successful in getting repealed many repressive earlier laws. The famous amendment demanding the convening of a Round Table Conference with a view to the early revision of the Act of the 1919 was passed in 1924 against the wishes of the Government. The Muddiman Committee was appointed in 1924 to report on the working of Dyarchy, because the Assembly was not satisfied with it. The recommendations of the Government regarding the Lee Commission and the Muddiman Committee were rejected. More Indians began to be appointed to Superior Services and the Army was Indianized, because the same was demanded by the Houses. The first Reserve Bank Bill was not pressed by the Government, when it became clear that the Assembly was opposed to it. The Simon Commission was appointed two years earlier, partly because a revision of the constitution was demanded by the Central Legislature. Whenever the High Commissioner made purchases or entered into contracts which were prejudicial to Indian interests, he was exposed in the Assembly, with the result that the agency work on behalf of the Government of India in England began to be conducted in a better manner. The Public Accounts Committee of the Legislature began to exercise a healthy check on the expenditure of the Government. The Assembly became an important public forum, from where grievances against the Government began to be usually expressed in the form of questions and adjournment motions. No doubt, the criticism of the opposition, at times, fell on deaf ears; yet it is impossible not to agree with Sir Malcolm Hailey that the "*Government of India became responsive, if not responsible, to popular opinion: its actions became indicative, if not reflective, of the popular view-point*".

CHAPTER XIII

MACHINERY OF DYARCHY IN PROVINCES

Before the act of 1919, the control of the Government of India over the Provinces was very tight in all matters. The Provinces were given no freedom worth the name even in subjects which were of Provincial interests. The British Government tightened the control of the Government of India over the Provinces under the Act of 1833. Such a policy was necessary for the efficient administration of the vast territories which came under the control of the Government of India. Under the Act of 1919, a clear attempt was made to relax this control. Such a step was considered necessary to give meaning and substance to the policy of starting responsible Governments in the Provinces, as was done under the Act of 1919.

Before the Act of 1919, legally speaking, all subjects were treated as central. The Provincial Governments were treated as mere agents of the Government of India in all matters. In practice, however, even before the Act of 1919, as a result of some administrative Rules made by the Government of India, some subjects were treated as within the competence of the Provinces. But this was a mere delegation of powers by the Central Government to the Provinces. The Government of India could, at any time, add to or take away these powers from the Provinces. The Act of 1919 was based on the principle that a *certain amount* of autonomy was to be given to the Provinces. For this purpose some relaxation of the control was inevitable, which necessitated the demarcation of the Central and the Provincial spheres separately.

Central and Provincial Subjects : The division between the Central and Provincial subjects was based on the recommendations of the Functions Committee, which framed certain rules known as the Devolution Rules. Two lists of subjects were drawn ; one Central and the other Provincial. Those subjects which were of all-India concern and required a uniform treatment throughout India for their administration were placed in the Central List, while those subjects which were *predominantly* of Provincial interests were grouped under the Provincial List. Defence, foreign affairs, relations with Indian states, public debt, tariffs, customs, posts and telegraphs, patents and copy-rights, currency and coinage, communications, railways, air crafts, inland waterways, commerce and shipping, civil and criminal laws and laws of procedure, banking, census survey, control over all-India services, etc., were placed in the Central List. In the Provincial List, subjects like local self-government,

public health, sanitation, medical, administration, education, public works, water supply and irrigation, land revenue administration, famine relief, agriculture, forests, co-operative societies, administration of justice, police and jails were included.

This division of subjects into Central and Provincial was not intended to be rigid, because even under the Act of 1919 the Government of India continued to be unitary in nature. Hence, in order to provide flexibility to this division, certain further provisions were made in the Devolution Rules. It was provided that any item falling in the Central List may be declared by the Governor-General-in-Council as of merely local interest. Such a declaration would bring that item under the competence of the Provincial authorities. The Government of India, on the other hand, was given concurrent powers of legislation over the whole of the Provincial List, but before any such legislation was undertaken by the Central authorities, a previous sanction of the Governor-General was necessary. It was further provided that any subject which was not included in the Provincial List was to be treated as a Central subject, which meant that all the residuary powers belonged to the Central Government. Whenever there was any doubt as to whether a subject was Central or Provincial, the decision of the Governor-General was final.

Reserved and Transferred subjects : The Provincial subjects were further sub-divided into reserved and transferred subjects. In the words of Mont-Ford Report, the object was "to include within transferred subjects those departments which afford most opportunity for local knowledge and social service, those in which Indians have shown themselves to be keenly interested, those in which mistakes that may occur, though serious, would not be irremediable and those which stand most in need of development. But departments, primarily concerned with law and order, and matters which vitally affect the well-being of the masses, who may not be adequately represented in the new Councils, such as the question of land revenue or tenant rights, should not be transferred". This was the declared basis for the division; although nationalist opinion in India was not slow to point out that the real object of the division was to keep all the important or "key" departments on the reserved side and only "safe" departments were treated as transferred subjects. Land revenue, irrigation, famine relief, law and order, industrial matters, control over newspapers, books and printing presses, local fund audit, borrowing, etc., were kept as reserved subjects. On the other hand, local self-government, public health and sanitation, medical administration, education other than that of Europeans or Anglo-Indians, public works, agriculture, co-operative societies, etc., were treated as transferred. It was provided that in case of a doubt, whether a particular subject was transferred or reserved, the decision of the Governor was final. Under the Rules, which were framed, the finance department was treated as a reserved subject in every Province. The transferred

subjects were to be administered by Ministers, who were responsible to their respective Provincial Legislative Councils. The reserved subjects were under the charge of Councillors, who were responsible to the Secretary of State and the Parliament, along with the Governor, for the proper administration of those subjects.

RELAXATION IN CONTROL

Under the Act of 1919, the control of the Government of India over the Provinces was relaxed in legislative, executive and financial matters.

Relaxation in Legislative matters : Before the Act of 1919, for every legislative project undertaken by a Provincial Government, the previous permission of the Government of India was necessary. After the Montford Reforms, previous sanction of the Government of India was no longer required for passing a law on the Provincial List *except in some special cases*. This was clearly a great improvement. Subsequent assent of the Governor-General was, however, necessary for every Bill to become an Act, as before. The Provincial Governments could also legislate on a subject included in the Central List, after getting the required permission for that purpose from the Government of India. In practice, the Government of India rarely interfered in the sphere of Provincial legislation on a transferred subject. But when a legislation was undertaken by a Province on a reserved subject, the Government of India did often interfere.

Relaxation in Executive matters : It was clearly provided in the Act of 1919 that the Provinces were under the "superintendence, direction and control" of the Government of India in *all matters* relating to the Government of a Province. The Provinces were required to obey the orders of the Governor-General-in-Council and were expected to keep the Government of India constantly and diligently informed in all important matters. The Government of India could ask for information on any matter from the Provincial Government and the latter were bound to supply the same. But all the same, a certain degree of relaxation, even in the administrative control, was inevitable from the very nature of the new arrangement.

So far as the administration of the transferred subjects was concerned, the control of the Government of India over the Provinces was relaxed a good deal in practice, and interference was rare. It was specifically provided in the Act that control over the transferred subjects could be exercised *only* for the following purposes, *viz.*, to safeguard the administration of a central subject, to decide a dispute between Provinces which had failed to agree and to safeguard the interests of all-India Services. Even when the Government of India felt that a mistake was being committed by a Province, interference was avoided to let the Provinces learn by making mistakes. As far as the administration of the reserved subjects was concerned, no relaxation of control was intended. The Government of India was

specifically made responsible to the Secretary of State for their administration. Such a control was "exercised most fully and constantly in the sphere of law and order. The Home Department of the Government of India laid down the policy to be followed by the Provincial Governments in dealing with political movements and revolutionary propaganda and crime and directed from time to time to institute prosecution for political offences."¹ The Joint Select Committee had, however, recommended that in the administration of the reserved subjects, the Government of India should not, ordinarily, interfere in purely Provincial matters when the Provincial Government and the Provincial Legislature were in agreement.

The Government of India initiated the system of inter-Provincial Conferences to co-ordinate and to bring to a uniform level the activities of the various Provinces, especially in the sphere of the transferred subjects. "The Government of India has acted as the friendly co-ordinator of provincial activities. Conferences on matters such as Education, Jail administration and Police Work have enabled provincial administrations to conduct their affairs with acquaintance of the experiences and interests of their fellows (other provinces)."²

Relaxation in Financial matters : Please see the Chapter on the Financial Devolution.

The Provinces were, thus, given some independent sphere of work. In the last resort, however, the Government of India remained responsible to the Secretary of State and the Parliament for the entire Provincial administration ; which made a certain amount of supervision essential, even over the sphere intended to be placed under the charge of the Provinces. Provincial Autonomy, of course, was denied; but a beginning was definitely made in taking the Provinces towards that status. The importance of the Act of 1919, thus, lay in the fact that a real, though humble, beginning was clearly made in giving the Provinces at least some independence of action in Provincial matters. It served as a step to better and fuller form of Provincial Autonomy, which was introduced in the Provinces on April 1, 1937, under the Act of 1935.

POWERS OF THE GOVERNOR

The Governor was the pivot of the Provincial administration. He is aptly described as the key-stone of the Dyarchical arch. The powers of the Governor fall under three categories : executive, legislative and financial.

Executive Powers : The Governor was the head of the Provincial administration. Ministers were appointed and dismissible by him. He distributed portfolios amongst the Ministers and the Councillors. Rules governing the disposal of the administrative

1. Punniyah : Constitutional History of India, p. 182.
2. Banerjee : Documents, Vol. III, p. 127.

work done by the Ministers and the Councillors were also made by him. No doubt, in the appointment of Ministers, he was bound by a certain convention ; yet the legal superiority of the Governor over the Ministers was clear. He was also able to control the Ministers because of his influence over some members of the Council, i.e., the official block, the nominated members and the Services. Ministers also depended upon him for eliciting support from the Finance Department. In extreme cases, he could refuse to accept the advice tendered by a Minister regarding the administration of a transferred subject. In the same manner, the Councillors were also under his thumb. They were invariably appointed on his recommendation. He could get a Councillor dismissed. The administration of the reserved subjects was primarily the Governor's responsibility. He could also assume charge of the transferred subjects when normal working of Dyarchy was not possible, as happened in C. P. and Bengal when the Ministers refused to work the constitution. He could over-rule a majority decision of the Councillors. Thus, it will be seen that both Ministers and the Councillors were under his control. Apart from this, some of the high officials in the Province were appointed on the recommendation of the Governor. He exercised a considerable control over the superior Services in the Province.

Legislative Powers : The Governor summoned the Legislative Council. He appointed the President for the first four years, after which the President, though elected by the Council, required his approval. He could extend the life of the Council for a year and could dissolve it earlier. He could prorogue a session of the Council. Every bill required his assent. He could return a bill for reconsideration. He could stop discussion of a bill or a resolution. He could reserve a bill for the consideration of the Governor-General. In certain categories of bill, e. g. regarding religious matters, universities, land revenue, such a reservation was compulsory. In others, it was optional. He could address the Council and could require the attendance of its members for that purpose.

The proper administration of the reserved subjects was primarily a responsibility of the Governor. As the Councils were provided with majorities of elected members, it was feared that, at times, the Councils might not pass a bill regarding the reserved subjects, which was considered necessary by the Governors. It was, therefore, provided that, where a Council had failed to pass a bill regarding the reserved side in the manner recommended by the Governor, he could pass that bill by *certifying* that the passage of the bill was essential for the proper discharge of his responsibility, regarding that subject. As a safeguard against the misuse of this power by the Governor, every such act required to be sent to the Governor-General, and did not become law till assent of His Majesty's Government was received on it. In emergencies, the

Governor-General was empowered to give his final assent to the bill and make it an Act, subject to a subsequent disallowance by His Majesty's Government. Such an act was further required to be laid before both Houses of the Parliament.

Financial Powers : The Governor also possessed some real financial powers. The Provincial budget could not be presented to the Provincial Legislative Council without his orders. No proposal for expenditure or appropriation of any revenue or money, for any purpose whatever, could be made, except on his recommendation to the Council for doing so. The proportion of votable and non-votable items was decided by him. About 70% of the Provincial expenditure was usually declared non-votable. The amount of expenditure to be incurred on the reserved and transferred sides was decided in a joint meeting of the Councillors and Ministers under the presidentship of the Governor and, in case of a difference of opinion, the decision of the Governor was final. When a grant relating to the reserved side was reduced or refused by the Council, the Governor could authorise its expenditure by certifying "that the expenditure was essential to the discharge of his responsibility for the subject." Such a power was considered necessary in view of the responsibility of the Governor for the reserved side to the Parliament. When the grant related to a transferred subject and it was reduced or refused, the Governor could authorise its expenditure only in cases of emergency, by declaring that such expenditure was necessary for the carrying on of that Department. This power of restoration, regarding the reduced or refused items, was freely used by the Governors during the sixteen years of the working of Dyarchy, especially in the Provinces of C. P. and Bengal where the Swarajists were, for most of the time, in a majority and refused to co-operate with the Government altogether.

Instrument of Instructions to the Governors : The British Government issued, identical to all Governors, instruction for the purpose of executing the provisions of the Act, and regarding the exercise of their powers and duties under it. The Governor was to assist the Ministers in the administration of the transferred subjects. In considering a Minister's advice and deciding whether or not there was sufficient cause in any case to dissent from his opinion, the Governor was expected to have due regard to the relations of the Minister with the Legislative Council and to the people of the Province, as expressed by their representatives therein. This in practice meant that the Governor was usually not to disregard the advice of a Minister, so long as there was a majority in the Legislative Council prepared to support his action. Because of these instructions the Ministers were, invariably, appointed from the elected members of the Legislative Council and only from those persons who could command a majority in the Council. The Governor was further required to do his best to maintain a standard of good administration in the Province and religious toleration and cordial

relations among all classes. He was required to keep the responsibility of the reserved and the transferred sides clear and distinct. He was further advised to encourage the habit of joint deliberation between the Councillors and Ministers, so that the Ministers should profit by the administrative experience of the Councillors and the Councillors should be able to know the wishes of the people of the Province.

In the Instrument of Instructions the following special responsibilities were laid on the Governors: (i) to see that all measures necessary to preserve tranquillity and to prevent religious or social conflict were duly taken; (ii) to ensure that all orders issued by the Secretary of State or the Governor-General-in-Council were complied with; (iii) to provide for the advancement and social welfare of small and backward communities; (iv) to safeguard the legitimate rights and privileges of members of the Indian Services; and (v) to prevent the establishment of a trade monopoly or any unfair discrimination in matters affecting commercial or industrial interests.

From the foregone discussion, it is amply clear that the Governor was given real and substantial powers in the whole set-up of Dyarchy. He was not only a key-stone of the Dyarchical arch; he was central to the entire Provincial administration. The intention of the framers of the Act was that the Governors should not ordinarily interfere in the work of the Ministers. But from the working of Dyarchy, it is quite apparent that most of the Governors tried to control the Councillors as well as the Ministers. Collective responsibility among the Ministers was seldom encouraged. Joint consultations between the two sides were rarely arranged. It will not be too much to say that Dyarchy lost its real significance because of the attempt on the part of some Governors to control the Ministers themselves, rather than let them be controlled by the Legislative Councils.

TWO SIDES OF DYARCHY

The Provincial Executive under the Act of 1919 was divided into two parts—Councillors and Ministers. The Councillors were responsible to the British Parliament which was tantamount to responsibility to the British people. The Ministers were responsible to the Provincial Legislature which ultimately meant responsibility to the people of the Province. The Ministers were placed in charge of the transferred subjects, and the reserved subjects were to be administered by the Councillors. This division of the Provincial Government into two parts, each having a separate charge and responsible to different masters was given the name of Dyarchy.

Executive Councillors: The maximum strength of the Councillors for a province was fixed at four. But in practice four Councillors were appointed only in the three Presidencies. In the remaining six Provinces only two Councillors were appointed. It was usual to appoint half the Councillors from

amongst Indians. The Councillors were *ex-officio* members of the Provincial Legislative Councils. They were appointed for five years by His Majesty's Government on the recommendation of the Governor of the Province. The Councillors held office during the pleasure of the Crown. Their services could be terminated, even earlier than five years, by the British Crown. The salaries of these members were fixed by the Governor and were charged on the revenues of the Province. In other words, their salaries were not votable. The Councillors were in charge of the reserved subjects. As members of the Legislative Council, they were supposed to initiate legislation and answer questions in the Legislature regarding their respective departments. The Councillors were not made responsible to the Provincial Legislature and an adverse vote passed by the Legislature against a Councillor or all of them involved no responsibility on their part to resign. The Governor and these Councillors were jointly responsible to the Secretary of State and the British Parliament for the administration of the reserved side. These Councillors possessed a corporate character, because they were jointly responsible. The Governor presided over joint meetings of the Councillors. At these meetings, ordinarily, decisions were taken by a majority vote. The Governor possessed a casting or an additional vote in case of a tie. In extraordinary cases, the Governor possessed the power of over-ruling a majority decision of the Councillors, by certifying that such a step was necessary in the public interest. The use of this extraordinary power was seldom made. This was the irresponsible part of the Provincial Government under the Act of 1919.

The Ministers : The transferred subjects, as already stated, were administered by the Governor with the help of the Ministers. No limit was fixed on their number. But in practice, three Ministers were appointed in each of the three Presidencies and two in the remaining Provinces. No man could be appointed a Minister, unless he was an elected member of the Provincial Council. If he was not a member at the time of his appointment, it was necessary for him to become a member within six months of his appointment, otherwise he was to vacate his post as a Minister. Legally speaking the Ministers were appointed by the Governor and could be dismissed by him. In practice, only those elected members were appointed, who enjoyed the confidence of the Council. The salaries of these Ministers were fixed by the Provincial Legislature at the beginning and were voted upon every year. At the time of such voting an opportunity was generally utilised to discuss the working of the Ministry, whose salary was being voted upon. A token cut in the salary was moved against a Minister who was sought to be censured for any defects in his department. When such a cut was passed, it involved the resignation of the Minister concerned. There was also the direct method of securing the removal of a Minister, i. e., by passing a vote of no-confidence or censure against him. The Ministers were neither given a corporate character nor were made

collectively responsible. The Joint Committee expected, on the basis of their experience of responsible government in England, that Ministers would generally act together. In the opinion of the Committee, it was better that they should do so. In the administration of the transferred subjects, the Governor was expected to be guided by the advice of the Ministers. He presided over their joint meetings. Such joint meetings were, however, very rare, because the Ministers were not considered collectively responsible for the transferred side. Some of the Governors even discouraged such a tendency. In exceptional cases, the Governor could disregard the advice of Minister.

THE PROVINCIAL LEGISLATURE

Only one legislative chamber, known as the Provincial Council, was provided in each Province. The authors of the Montford Reforms wrote, "We propose, that there shall be an enlarged Legislative Council, differing in size and composition from Province to Province, with a substantial elective majority, elected by direct election, on a broad franchise, with such communal and special representation as may be necessary." This sums up, admirably, the salient features of the Provincial Legislative Councils set up under the Act of 1919.

Composition : The number of members of the Councils varied from Province to Province. It was laid down that, "Not more than twenty percent of the members can be official and at least seventy per cent must be elected members". The minimum number was fixed for each Province. Apart from the elected members, there were *ex-officio* members and nominated officials and non-officials. The Executive Councillors were *ex-officio* members of the Legislative Councils. Other officials were nominated to provide stabilizing influence and day-to-day knowledge of the administration. The non-officials were to be nominated for the purpose of giving all interests and communities a fair representation in the Council. The system of nomination was specially recommended for the depressed classes. It may be noted that elected majorities were specially provided for in the Councils.

The following table gives a comparative idea of the strength of the Councils, as given by the Simon Commission :—

Name of the Provinces	No. of elected members	Officials, ex- officio & nominated	Nominated non-officials	Total
Madras ...	98	11	23	132
Bombay ...	86	19	9	114
Bengal ...	114	16	10	140
United Provinces ...	100	17	6	123
Punjab ...	71	15	8	94
Bihar & Orissa ...	76	15	12	103
Central Provinces ...	55	10	8	73
Assam ...	39	7	7	53
N. W. F. Province ...	39	7	7	53

Constituencies and System of Election : There were mainly two types of constituencies-general and special. General constituencies were set up for Mohammedans, Sikhs, Indian Christians, Europeans, Anglo-Indians, and non-Mohammedans (all others than those included in the remaining general constituencies). The general constituencies were further sub-divided into urban and rural constituencies. The special constituencies were four ; namely, universities, landlords, industry and commerce. Thus it will be seen that the constituencies were to represent 'interests', 'classes' and 'communities' separately. The system of election was direct. Franchise was kept fairly low, keeping in view the conditions prevailing at the time. The right of vote was given on the basis of various factors, *e. g.*, community of the voter, place of residence, occupation of a building for which a certain amount of rent was paid, assessment to a certain amount of income tax, holding of land, payment of a certain amount of land revenue, etc. Women were not given the right of vote. But the Provincial Councils were authorised if they so desired, to make rules for giving women the right of vote. This was done almost everywhere. There was also a system of plural vote, *i.e.*, the system of possessing more than one vote. Those, who held votes in the special constituencies, like registered graduates in universities and landlords, etc., also voted in the general constituencies.

Montford Report and Communal Electorates : The Montford Report regarded the system of communal electorates undesirable for the following reasons :—Firstly, it was anti-national and dangerous. Secondly, it was opposed to the teaching of history. Everywhere national sentiment had grown as the result of joint electorates. Thirdly, it was sure to perpetuate class divisions and retard the growth of single citizenship or single nationality. Fourthly, it was bound to prove a hindrance in the development of a responsible government. And finally, "a minority which is given special representation because of its weakness is positively encouraged to settle down into a feeling of satisfied curiosity and is under no inducement to educate and qualify itself to make good the ground which it has lost compared with the stronger majorities. On the other hand, the majority will be tempted to feel that they have done all that they need do for their weaker fellow countrymen and that they are free to use their power for their own purpose. The give and take which is the essence of political life is lacking."

Such was the *condemnation* of the communal electorates by the authors of Montford Report. Yet, the Report recommended the retention of this system for Muslims, on the excuse that they were bound by the Congress-League Pact of 1916, in which the Congress had accepted the same for them. That may be so. But what about Sikhs who were recommended separate electorates by the authors of the Report for the first time on the basis

of their strength in the army and special importance as a martial class. The Montford Report refused to recommend the extension of the system to Europeans, Anglo-Indians and Indian Christians. But this was also conceded by the Functions Committee, which made Rules under the Act of 1919.

Presiding officers and duration of Sessions : The Governor was to fix the time and place for the meetings of the Council. He could also prorogue it. The normal life of the Council was three years. The Governor could dissolve it earlier, but he was expected to hold fresh elections within six months of such a dissolution. The Governor could also extend the life of a Council for one year. Under Morley-Minto Reforms, the Governors were *ex-officio* Presidents of the Councils. A healthy departure was made on the point. It was provided that the President of the Council was to be nominated by the Governor for the first four years, after which he was to be elected by the Council. Nomination for the first four years was considered essential to secure the services of some able parliamentarians to guide the deliberations of the Councils. Deputy Presidents were elected from the very beginning.

Powers of the Councils : As compared with the Councils under Morley-Minto Reforms, the powers of the Provincial Legislative Councils were increased a good deal. These powers can, conveniently, be studied under the following headings :—

Legislative Powers : The Provincial Legislature had the power to make laws "for the peace and good government of the territories for the time being constituting that Province." Before the 1919 Act, previous permission of the Governor-General was required for every legislation. After 1919, previous sanction was no longer necessary on Provincial matters, except only in a few cases, e. g., while imposing or authorising a tax not included within the powers of the Provinces, affecting public debt, affecting the discipline or maintenance of any part of army, affecting the relation of the Government with Princes or foreign States, regulating any central subject, etc. The Provincial Legislature was expressly forbidden to make any law affecting any act of the Parliament. Every bill required the assent of the Governor as well as the Governor-General, before it became an Act. The Governor could return a bill for reconsideration of the Council. He could also reserve a bill for the consideration of the Governor-General, before giving his assent. The Governor-General could also return a bill for reconsideration and could further reserve it for the consideration of His Majesty's Government. Certain types of bills were compulsorily required to be so reserved by the Governor for the consideration of the Governor-General. The legislative powers of the Councils were very much limited by the legislative powers of the Governors.

Financial Powers : The estimated annual expenditure and revenue of the Province were laid in the form of a statement before

the Council each year and the proposals of the Provincial Government for expenditure in any year were submitted to the vote of the Council in the form of 'demands for grants.' There were two types of items for expenditure—one votable, and the other non-votable which included expenditure on : (a) contribution payable by the Provincial Government to the Governor-General's Council ; (b) interests and sinking fund charges on loans ; (c) expenditure of which amount is prescribed by or under any law ; (d) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State-in-Council ; and (e) salaries of the Judges of the High Court of the Province and of the Advocate-General. It was for the Governor to decide whether an item was votable or non-votable. As far as non-votable items are concerned, they were not submitted for the vote of the Councils. They could only be discussed. The votable items were, however, submitted to the vote of the Councils, for approval. The Council could reduce or reject an item, but was not competent to increase an item of expenditure. The salaries of the Ministers were fixed by the Councils. These salaries were voted and passed every year. The financial powers of the Council were greatly limited by the powers of the Governor on money matters.

Executive Powers : Executive powers of a legislature are those powers by which it is enabled to influence the Executive in its decisions and working. The members of the Councils could ask questions and supplementary questions of the Ministers and Councillors. The right of asking supplementary questions was extended to all members. Apart from it, the members could also move resolutions and adjournment motions. The Councils were, for the first time, given the right of removing Ministers by passing directly a vote of no-confidence or vote of censure against them. Such a vote was effective only against the Ministers, because they alone were made responsible to the Councils. Ministers were duty bound to resign, when such a motion was passed. The Councillors had no such obligation, even when they were censured by the Council, because they were responsible to the Secretary of State and the Parliament and not to the Councils.

Defects of the Councils : In the first place, the legislative, financial and executive powers of the Governors limited a good deal the similar powers of the Councils. Secondly, the vicious principle of separate or communal electorates was not only retained for Muslims, but it was even extended to other communities like Sikhs. Thirdly, the nominated bloc, i. e., nominated officials and nominated non-officials generally voted according to the wishes of the Governor. As the elected members were divided on the basis of 'interests' and 'communities', the importance of the nominated bloc increased a good deal. With the help of the official votes, the Governors, often, kept unpopular Ministers in the saddle, got enacted unpopular measures and could give a show of popular

approval to their actions. Fourthly, the Legislative Councils were not given the power to dismiss undesirable Councillors. This power was specifically denied to them, because of the system of Dyarchy, which was introduced in the Provinces. As the Councillors were in charge of vital subjects, an important part of the Provincial administration was, thus, kept beyond the control of the Provincial Legislature. Finally, the whole system of electorates was so devised-based as it was on representation of 'interests', 'classes' and 'communities' that it encouraged the formation of 'petty groups' in the Councils. The conditions were hardly congenial for the formation of real type of political parties. As there were no regular parties, except the Swarajist Party in C.P. and Bengal, there was no effective control over the Ministers.

Value of the Councils : The Provincial Councils of 1919 were, no doubt, a great improvement on the type of the Legislative Councils that we had under the Act of 1909. The number of their members was considerably increased. Elected majorities were introduced everywhere. The Provincial sphere of legislation was demarcated. Presidents were allowed to be elected for the first time. The right of voting grants was newly given. A part of the Provincial Executive was made removable by the Council for the first time, which gave Indians experience in conducting responsible or parliamentary government. The right of adjournment motions was now given. The franchise was considerably enlarged, which gave the Councils a more representative character. Even the Councillors, though irremovable by the Legislature, were subject to its influence, because they could be daily subjected to questions and supplementary questions. They could also be influenced by resolutions and adjournment motions. A Council could refuse to oblige a Councillor by passing a law as he desired it, which compelled him to go to the Governor and have recourse to the extra-ordinary powers of legislation of the latter. Whatever the short-comings of the Councils, they provided our members and Ministers training in parliamentary government: a form which India was destined to choose even after Independence. Our oldest parliamentarians were the product of these Councils.



CHAPTER XIV

NATURE AND WORKING OF DYARCHY

(Dyarchy was introduced in eight Provinces ; namely, Bengal, Madras, Bombay, United Provinces, Punjab, Bihar and Orissa, Central Province and Assam on the 1st April, 1921. North Western Frontier Province became a Governor's Province in 1932 and came under it. Thus Dyarchy worked in these nine Provinces till April 1, 1937. During this period, it stopped functioning in Central Provinces from 1924 to 1926.) In Bengal it ceased operating twice ; once from 1924 to 1926 and then again for some months in 1929. This happened because of the decision of the Swarajist Party, which was in majority in those Provinces, not to accept offices under Dyarchy.)

The first elections, held under Dyarchy in 1920-21, were boycotted by the Indian National Congress. This gave chance to Liberals to capture the Councils and Ministerships during 1921-23. In 1924, the Congress contested the elections but only with the object of wrecking the constitution from within. Off and on, a demand was made by the nationalist Parties, both in Centre and the Provinces, to put a stop to the experiment of Dyarchy and to introduce something more acceptable to the people. In 1924, the Muddiman Committee was appointed to report on its working. The majority of its members, who were Europeans, reported that Dyarchy required certain minor changes to enable it to work smoothly and successfully. The minority, which included Sir Tej Bahadur Sapru and Mr. M. A. Jinnah, gave a separate report and were of the opinion that Dyarchy was fundamentally wrong in principle and hence should be scrapped root and branch. The Simon Commission also commented on the draw-backs of the scheme. Some defects were inherent in the very nature of Dyarchy and the principle on which it was based. Its other weaknesses came to light during its actual operation:

① **Finance under Dyarchy :** The Finance Department was treated as a reserved subject in every Province and was thus under the charge of a Councillor. A Finance Secretary was appointed in every Province, who generally belonged to the Indian Civil Service. A Joint Finance Secretary could be appointed to assist the Ministers, if they so desired. (It was the function of the Finance Department to scrutinise all proposals for expenditure coming from the reserved as well as the transferred sides. An advice given by the Finance Department could not be rejected by a Councillor, without reference to the Executive Council, as a whole. On the other hand, an advice

tendered by this Department could not be ignored by a Minister, without the concurrence of the Governor.

The sources of revenue were kept joint for the reserved and the transferred sides. The total amount available in a Province was distributed between the two sides in the beginning of every financial year, by agreement between the two sides in a joint meeting held for that purpose. In case of disagreement between the reserved and the transferred sides over allocation of funds, the decision of the Governor was final. Thus, it will be seen that although the reserved and the transferred sides were separate for administrative purposes, the purse was kept joint, which was considered necessary by the framers of the scheme of Dyarchy, in order to inculcate collective consciousness between the two sides.

One of the greatest defects of Dyarchy, from the point of view of Ministers, was that their financial needs were not adequately met. The Ministers were mostly entrusted with nation-building Departments like public works, agriculture, education, medical, and local self-government. These Departments required expenditure. The work of a Minister was apt to be judged by the extent of improvement he was able to make, in the services rendered by his Department. The Finance Department was much more keen on meeting the needs of the reserved side, than those of the transferred side. The transferred side was given a step-motherly treatment. Projects for fresh expenditure put forward by the Ministers were often rejected on flimsy grounds. In case of disagreement, an approach was to be made to the Governor, who also was inclined to look first to the needs of the reserved side, which was directly his responsibility. It was usual for the Governors to share the view-point of the Finance Department. The proposals of the Ministers were sometimes rejected for want of funds and, at other times even on mere technical grounds. The Ministers, on some occasions, were told to have a recourse to fresh taxation and to go to the Legislature for it without even the assurance that all the proceeds from the new taxes would be left to them. (Mr. Chintamani, a Minister in U.P., told the Muddiman Committee in his evidence that the reserved Departments got all the money they required, before the transferred side could obtain what was urgently needed by it.) He further said, "I am prepared to state this without any exaggeration that it was from general experience of both the Ministers in the United Provinces that they had to contend with great difficulties when they went to the Finance Department, that pretty frequently they had to go before the Governor, pretty frequently the Governor did not side with them and pretty frequently they could only gain their point in the end, by placing their offices at the disposal of the Governor."

Position of Services : The two sides were expected to work with the same administrative machinery and the same staff. At the head of each Department under a Minister, there was generally

معاونین وزارت امور داخلہ

an officer belonging to an all-India Service, who was directly appointed by the Secretary of State and was in the last resort amenable, only to his discipline. (The salary and conditions of service of these officers were also regulated by the Secretary of State-in-Council.) In all cases where disciplinary action was proposed to be taken against any such officer, an appeal could be taken to the Secretary of State-in-Council.

No order of censure, with regard to these officers or regarding their postings and transfers could be passed by a Minister, without the concurrence of the Governor. It was one of the special responsibilities of the Governor to redress the legitimate grievances of the Services. (The Secretary in charge of each Department had a direct access to the Governor. He was duty-bound to keep the Governor informed regarding the work in his Department and especially in those matters, for the proper administration of which a special responsibility was placed on the Governor.) Under the Rules, every case in which there was a disagreement between a Minister and the Secretary was to be referred to the Governor for decision.

As a matter of principle, it is the privilege of a Minister to lay down the policy concerning a Department under his charge. It is the duty of the Services to execute that policy faithfully and loyally. But in India, these Servicemen were mostly Europeans. They belonged to the class of the rulers of the country. From the earliest times, they were accustomed to have a share in policy-making, as well. It was rather difficult for them to adapt themselves to the new set-up and to toe the lines with the Minister. Some Servicemen considered the Ministers too raw and ignorant to be able to perform the difficult task of policy-making. (As a result, the wishes of the Ministers were often flouted by the Secretaries under them, especially because the Minister had no power to punish them for insubordination or inefficiency. [The position of the poor Minister was awkward indeed.] He was expected to run his Department with the help of Servicemen, over whom he had no control. As the Secretary had direct access to the Governor, the former was able to prejudice the mind of the Governor against the view of the Minister, even before the Minister had an opportunity of meeting the Governor and explaining the former's point of view. (As differences between the Ministers and the Secretary were to be referred to the Governor, the poor Minister, at times, was told that he was wrong and his subordinate was right.) The whole procedure was administratively wrong. It encouraged insubordination on the part of the Services who did not hesitate to disregard the view-point of the Ministers. Most of the Governors had been elevated from the class to which the Secretaries belonged. There were racial ties between them and both, often, shared each other's point of view. The Minister was a foreign element in between them. In a word, the Ministers were uncomfortably sandwiched between the Governor and the Services. There was snobbery above and insubordination below.

"The difficulty of the Ministers was aggravated by the fact that they seldom had Secretaries dealing with their subjects alone. (The Minister was assigned 'portfolios' made up of items from various Departments of the Provincial Secretariat.) In most of the Provinces the Ministers dealt with several Secretaries, not one of whom would feel himself responsible to the Minister for his work". (Effective control was impossible under these circumstances. The position of the Ministers was pitiable.)

⑤ **Joint deliberations and Separate responsibility** : As the two sides of the Government were responsible to two *different* masters for two *distinct* fields of administration, the Joint Parliamentary Committee, which reported on the Act of 1919, recommended that responsibility of each side, for its own field, should be kept distinct. It was pointed out that "the people must not be kept in doubt, as to what acts are done by the Governor on the advice of the Executive Council and what acts are done by him on the advice of the Ministers. Any confusion of responsibility would be unfair to the Ministers as well as the Councillors and as a result the responsible Government will lose its real educative value". (In spite of this separation of responsibility, the two sides were expected to work with the utmost of harmony and co-operation. This delicate task of bringing together the two parts was to be performed by the Governor. The Joint committee, therefore, "regarded it as of the highest importance that the Governor should foster the habit of free consultation between the both halves of his Government and indeed that he should insist upon it, in all important matters of common concern. He will thus ensure that the Ministers will contribute their knowledge of the people's wishes and susceptibilities and the members of the Executive Council their executive experience to the joint wisdom of the administration.....there cannot be too much mutual advice and consultation on matters of common concern."

But as the two sides were responsible to different authorities, with different nature and character, whose interests often clashed ; it was difficult to expect co-operation and mutual good-will between the two parts. "It was an attempt to mix oil and water or ride two horses going in opposite directions." Dyarchy was the yoking of autocracy with democracy, absolutism with popular sovereignty. Government is an organic whole. Any attempt to divide it into water-tight compartments is bound to prove fatal to its singleness of purpose.

In spite of all these inherent difficulties, the two sides of the Government, depended so much on each other that it proved at places difficult to work, except in co-operation with each other. In some of the Provinces the two sides worked as a *single unit*. This was especially so in Madras. Even in other Provinces joint meetings and joint deliberations became a normal feature of Dyarchy. Some

Provinces spoke of joint meetings, joint decisions and *joint responsibility* of the two sides. This was clearly against the intentions of its authors, who had clearly envisaged a separate and distinct responsibility for each decision of the two sides. Here Dyarchy changed its colour completely. *It* worked contrary to the expectations of its authors.

Division of subjects into reserved and transferred : The division of subjects into reserved and transferred did not follow any clear-cut principle. It was haphazard and illogical. Sir K. V. Reddy, a Minister of Madras, in his evidence before the Muddiman Committee, said, "I was a Minister for development without forests. I was the Minister for agriculture minus irrigation. As Minister of agriculture, I had nothing to do with the administration of the Madras Agriculturist Loan Act or the Madras Land Improvement Loans Act.....Famine relief, of course, could not be touched by the Minister for agriculture. Efficacy and efficiency of a Minister for agriculture, without having anything to do with irrigation; agricultural loans, land improvement loans and famine relief is better imagined than described. [Then again, I was a Minister for industries without factories, boilers, electricity and water power, mines or labour, all of which are reserved subjects.] Whereas education was a transferred subject, the education of Europeans and Anglo-Indians was treated as a reserved subject. An interesting example of this confusion comes from U. P. In 1921 an enquiry started in the Department of agriculture, regarding fragmentation of lands. When its report was published, it was decided that the case should have been dealt with by the revenue Department and was transferred to that Department. In 1924, it was decided that the case related to the co-operative Department. Under such a scheme of division of subject, clashes and deadlocks between the two sides were inevitable and smooth working difficult.)

Ministers' dependence on the Governor : In each Province, the Governor was a force to be reckoned with. He held many trump-cards in his hands. He could dismiss a Minister. The official and the nominated non-official blocs often voted according to the wishes of the Government. Ministers often needed the help of these votes) even to retain their seats as Ministers. This was especially so, because there were no regular parties to back the Ministers. (The co-operation of the Councillors was available only to that Minister, who was in the good books of the Governor.) The nefarious practice of appointing ex-Ministers as Councillors made many Ministers subservient to the Governor. Even funds needed for the smooth-working of Department under the charge of a Minister required the help of the Governor. Under the circumstances, it was but natural for some Ministers to tag themselves to the Governors. Some Ministers considered it safe to keep the Governors pleased and ignored the wishes of the elected members. It was far more

convenient for a Minister to retain his seat as a Minister on the assurance of the support of the Governor and a few additional elected members, than to displease the Governor and to depend on the support of elected members, who were hopelessly divided. "The lack of organised parties or programmes, other than the Swarajist, was as detrimental to the working of the Councils as it was in the elections. For Ministers were not supported by steady majorities, pledged to back them as their party leaders, and to see their measures through. More and more, indeed, they could only get their way and keep in office *with the help of the votes of their official colleagues* on their reserved sides. Inevitably, therefore, the line of dyarchic division was blurred and with it the fixing of responsibility. (The result was something like throw back to the Morley-Minto period.) The Government came to be regarded as virtually one Government, Ministers, as Government men, like the Indian members of the Executive Council before 1919 and the legislature itself not as the ally, and at need the master, of the Government in the transferred field, but as in the old irresponsible days, its permanent opponent."¹ Prof. Coupland calls this as a "distortion of Dyarchy."² In this respect also, Dyarchy worked quite differently from what was intended by its authors.

The poor Ministers had to please two masters, having different nature and temperament as well as opposing interests. The goodwill of the elected members was also necessary, because they were in a majority in the Council and the Ministers could be removed by an adverse vote. Some Ministers tried to please both the elected members and the Governor and, at the end, displeased both. Others pleased the Governor as a stronger side and displeased the elected members and thus made a caricature of their responsibility.)

Ministers and collective responsibility : In most of the Provinces the Ministers did not work on the principle of collective responsibility. Want of collective responsibility on the part of Ministers weakened their position against the Governor, the Executive Councillors and the Legislative Council. In some of the Provinces Dyarchy exhibited the sorry spectacle of some Ministers opposing each other, both outside and inside the legislature. In the Punjab, Sir Feroz Khan Noon openly criticised the actions of Sir Manohar Lal. (In the Bengal Legislative Council, Sir S. N. Banerji and Nawab Sahib openly exhibited their differences at the time of passing the Calcutta Municipal Bill.)

It was rather unfortunate that the Ministers were not, legally, made collectively responsible. The Joint Committee wished collective responsibility between Ministers to grow as a matter of convention. But most of the Governors discouraged the growth of

1. Prof. Coupland : The Constitutional Problem in India, Part I, p. 71.
2. Ibid, p. 71.

this convention. Ministers were appointed from different parties and groups often opposed to one another. The Governor dealt with them as individual Ministers and not as Ministries, which was rather unfortunate and against the wishes of the Joint Committee.

(Apart from all these defects, Dyarchy started functioning under unlucky stars.) The first Councils under it met, when the wounds of the Jallianwalla tragedy were fresh in the mind of Indians and Mahatma Gandhi had already started the non-co-operation movement against the Government. (The economic depression which followed in its wake added to the difficulties of the Ministers in getting sufficient funds needed for their departments.) Dyarchy was introduced as a half-way house between autocracy and Provincial Autonomy and hence had all the traditional and psychological weaknesses of a transitional stage. It was bound to end, sooner or later. Some British writers give credit to Dyarchy for its having worked for sixteen long years. (No doubt, it worked ; but it had a jerky and precarious life. Dyarchy was forced down the throat of Indians, against their wishes, all these years.) Prof. Coupland admits that Dyarchy failed in its "primary purpose which its authors intended to serve. It did not provide a real training in responsible Government".¹ No wonder, Dyarchy was made a target of severe criticism throughout these years.

Gains of Dyarchy : In spite of the draw-backs and difficulties explained above, Dyarchy did not prove altogether barren of good results for Indians. It did help towards future constitutional advance in India. For the first time, people at large got and exercised the right of vote, which resulted in political consciousness. Regular large scale elections were held for the first time, which had their own educative value. (Parliamentary atmosphere was created in the Councils for the first time.) There was a welcome change, howsoever slight, in the point of the view of British bureaucrats, who for the first time took orders from Ministers, who had risen from the rank and file. The Ministers obtained a look into some of the official secrets of the Government, which were till then jealously guarded. By the time, Dyarchy was changed to Provincial Autonomy, most of the Heads of the Departments on the transferred side were Indians. As Indians were incharge of the Government Departments, the pace of Indiansation of the Services was accelerated. Most of our renowned parliamentarians of the old guard are the product of these Councils. Our capacity to run responsible form of Government was no longer questioned. (Many useful reforms were introduced, which proved that Indians could make good administrators. "The system of local government, for instance, was re-adjusted on a broader franchise and with wider functions by the Bombay Local Boards Act, 1923 and by the Calcutta Municipal Act, 1923. The Madras Religious Endowments Act, 1926 was

1. Prof. Coupland : The Constitutional Problem in India, Part I, p. 70.

a bold treatment of a highly controversial question, involving old established vested interests. (Equally bold was the encouragement of industrial development by public funds and credits under the Madras State Aid to Industries Act, 1923) The Bombay Primary Education Act, 1923 extended the principle of compulsory primary education from the municipalities to the rural areas and empowered the Provincial Government to enforce compulsory primary education on a local authority, which did not introduce it, of its own accord.) The Bihar and Orissa Village Administration Act, 1922 was an attempt to vitalise village self-government by setting up boards to deal with the common local concerns of groups of villages and by regulating the appointment and power of *Panchayats*. These are only examples: similar legislation was promoted and carried through by Ministers in all or most of the Provinces.)¹ The Act of 1919 had made it optional for the Provinces to give the right of vote to women. Almost, in every Province, women were given the right of vote, along with men.

1. 1923
Most-landed

1. Prof. Coupland : The Constitutional Problem in India, Part 1, p. 70.

CHAPTER XV

NON CO-OPERATION MOVEMENT

Mahatma Gandhi returned to India : Mahatma Gandhi returned to India in January, 1915 from South Africa, where he had acquired a name for himself as a social worker. He was the founder of the new technique of non-violent civil dis-obedience, which was employed by him against the Government of South Africa, to dissuade it, from the policy of racial discrimination against Indians and the natives of the land. Gokhale was mostly responsible for persuading Mahatma Gandhi to return to India and to take part in her public life. Gokhale died in 1915. After his death Mahatma Gandhi began to follow in his foot-steps. When Mahatma Gandhi arrived in India, the War was on, and India had already been declared a belligerent country. In those days, Mahatma Gandhi was a professed loyalist. He once proudly spoke of his loyalty to the British Empire. He was a great admirer of the British traditions and culture. He valued British connections with India. He offered full co-operation without conditions. Gandhiji was not in favour of even pressing the British Government for making a declaration that they would introduce responsible Government in India after the War. He was even awarded the *Kaiser-i-Hind* gold medal for his great help in War.

How India received the Reforms : The reception by Indians of the Reforms of 1919 was a mixed one. The Reforms caused a split in the Congress ranks. The Moderate element in the Congress had already formed the National Liberal Federation in November, 1918 at Bombay under the lead of Shri Surendra Nath Banerji. These Liberals, in their Annual Conference held in 1919, wholeheartedly accepted the Reforms and found in them the fulfilment of the pledge given by the British Government in their Declaration of 1917. The Indian National Congress, in its annual session held at Amritsar in December 1919, declared the reforms as "inadequate, unsatisfactory, and disappointing", but at the same time, decided to "work the Reforms, so as to secure the earliest establishment of responsible government." Mr. Montagu was even thanked for his labours in connection with the bringing about of the Reforms. This attitude of co-operation with the Reforms was exhibited by the Congress, even after the gruesome tragedy of Jallianwala Bagh. All this was done mostly due to the efforts of Mahatma Gandhi, who till then believed in the wisdom of co-operation with the Government. This was after the fashion of Gokhale in whom Gandhiji had found the right guide. The offer

of co-operation was made, even when Mrs. Besant had pronounced the Reforms as being "unworthy of England to offer and India to accept". Tilak had characterised the Reforms as "unsatisfactory and disappointing—a sunless dawn" and started a fierce agitation declaring that the Congress-League Scheme of 1916 represented the minimum demand of India.

But during the course of the following nine months, certain events happened, which changed the whole attitude of Mahatma Gandhi towards the British Government. When a special session of the Congress was held at Calcutta in September, 1920, the entire outlook of the Congress had transformed and it adopted the non-co-operation programme and decided to boycott the reformed Councils. Mahatma Gandhi who had taken the lead in December, 1919 at Amritsar in offering co-operation was now mainly instrumental in putting the Congress on the war path. The Congress *for the first time* decided to adopt the policy of direct action, i.e., non-co-operation and civil disobedience against the Government. The chain of events, which brought about this radical change in the attitude of Mahatma Gandhi and the Indian National Congress towards the British Government, is described below.

Agitation against the Rowlatt Act : Various causes were responsible for the enactment of the Rowlatt Act, which S.N. Banerji rightly described as "the parent of the non-co-operation movement." During the War, the Government had dealt with the revolutionary crime under the Defence of India Act, which was to expire at the end of the War. The Government of India wanted to arm itself with extraordinary powers, at least for some years more after the War, especially because the War had intensified forces of nationalism. Moreover, as India was on the eve of future reforms, the bureaucracy wanted an additional weapon to deal with the non-co-operators with a stern hand. Besides, an agitation for complete sovereignty had started in Afghanistan and the Government of India expected disorder in that region. And finally, there was the fear of Russia creating trouble on the Indian frontier, especially on the side of Afghanistan.

When Montagu was about to leave India after his labours in connection with the Montford Reforms, permission was taken from him to set up a Committee with Justice Rowlatt as President to report on the nature and extent of the criminal conspiracies connected with the revolutionary movement in India and to suggest legislation, which was necessary to meet their danger. This Committee was appointed on the 10th December, 1917 and on the basis of its recommendations two Bills were introduced in the Imperial Legislative Council in February, 1919 which are called Rowlatt Bills, after the name of its President. The introduction of the Bills in the Assembly was a signal of an unprecedented agitation, which started in India to oppose them. In the Bills,

the bureaucracy had taken up the position that "it was impossible for them to maintain internal order, unless they were given the power to lock up, without trial, anybody they liked, for as long as they liked."¹ All the Indian members of the Imperial Legislative Council opposed the enactment of the Bills. The nationalist opinion feared that the Bills would provide convenient tools in the hands of the Government, to beat down, even legitimate political agitation and to harass the political workers. In the teeth of a fierce country-wide agitation against the Bills, which came to be nick-named as Black Bills, one of these Bills was passed on March 17, 1919.

Mahatma Gandhi had already declared that he would start an agitation against the Bills, if passed, and had advised the people to take a pledge for disobeying them with truth and non-violence to life, person and property. After the Bill was passed, Mahatma Gandhi advised the people to observe *hartal* on April 6 and "to observe it as a day of mourning on which no business was to be transacted by way of popular demonstration against the high-handed action of the Government in enacting the Rowlatt Bill." The *hartal* was actually observed at Delhi on March 13, 1919—that being the day previously fixed for it, which led to minor violent clashes between the authorities and the public at some places. Gandhiji was invited by public leaders of Delhi to come and pacify the situation. There were similar troubles at other places, especilly in the Punjab. Orders were immediately passed by the Government, refusing the entry of Gandhiji in the Punjab and Delhi. Gandhiji disobeyed these orders and started towards Delhi. On the way, he was arrested, taken back to Bombay and later released. The news of Gandhiji's arrest spread like wild fire throughout the country and led to more violent outbursts by the public and further repression by the Government. The Jallianwala tragedy was a sequence of this agitation. Before we describe the happenings at Jallianwala, it is interesting to note that out of the proposed Rowlatt Bills, one was dropped by the Government before it was finally passed. The one, which was passed, was not enforced even in a single case. Yet these Bills were responsible for a couple of tragedies that followed and caused revolutionary change in the methods of the Indian National Congress.

The Jallianwala Tragedy : An agitation was going on in the Punjab against the Rowlatt Bills, which had resulted in violence by the public, at places. The Government was particularly sensitive to the conditions prevailing in the Punjab, because of the large number of disbanded soldiers living there and because of its nearness to Afghanistan. Dr. Satyapal and Dr. Kitchlu were the popular leaders of the Punjab, at the time. Gandhiji was arrested on the 9th April. On April 10, 1919, Sir Michael O'Dwyer, the Lt. Governor of the Punjab, ordered the deportation of Dr. Kitchlu

1. Zacharias : *Renascent India*, page 189.

and Dr. Satyapal to some unknown place. This infuriated the people. A procession was taken out at Amritsar by the people to protest against the arrest of the popular leaders. The procession was fired at by the authorities, as a result of which some people died. The dead were taken up by the crowd on their shoulders and on their way back to the city, the processionists set fire to some public buildings and killed some Europeans. The civil authorities lost their nerves and requested military authorities to take up the charge of the city. General Dyer, who commanded the Jullundur Division at the time, arrived at Amritsar on April 12, 1919 to take up the charge. Only a day after, i.e., on the 13th, the Jallianwala massacre was ordered.

The inhabitants of Amritsar had started assembling in the Jallianwala Bagh from mid-day on April 13, to protest against the firing by the authorities on a peaceful crowd, which had resulted in deaths and to protest against the deportation of their leaders, whose whereabouts were not known. General Dyer passed orders, prohibiting the meeting, scheduled to be held on the 13th. But the notice of prohibition was not properly circulated and proclaimed. Some came even in spite of the knowledge of the orders. On hearing the news of people assembling, General Dyer proceeded to the scene of occurrence with one hundred Indian and fifty British soldiers. He took a machine gun, along with him, which, however, could not be taken to the place of the meeting, because the passage was too small for it.

The people had assembled for a simple protest. The meeting was perfectly peaceful. The leaders, to a man, were wedded to non-violence. The acts of violence that had occurred on the previous days were sporadic in nature and were committed by some hot-headed individuals. General Dyer did not give even a warning to the crowd for dispersal. 1650 rounds of 303 were fired. The firing stopped only when the entire ammunition was exhausted! According to the Government Report, as the result of firing, 379 persons were killed and 1137 wounded. The actual number was much greater, because of 10 minutes of intermittent firing. The use of force by military authorities during an internal disorder is permissible only to the extent necessary for bringing about order. But here, firing was resorted to for a different purpose. General Dyer, after, the gruesome massacre, left the dead and the wounded to their fate.

To complete the picture, it may be necessary to explain that Jallianwala Bagh is an open-space, in the heart of the city, enclosed on all sides by big walls of the houses. Apart from the only entrance, which was blocked by the military, there are four or five small gates, which are usually kept closed. Hence, during the course of firing, there was no way to escape. Ropes and chains were thrown from the roofs of the enclosing houses, on which the people climbed. Some climbed on trees. Even these people were not allowed to

escape. Firing was directed upward to kill them. The places where the bullets struck in those high walls have been marked, as a standing testimony to the way in which the people were ruthlessly and systematically butchered. Martial law was declared in Amritsar and in some adjoining cities. Iron curtain was set round the whole area to shut out news from escaping outside. A veritable reign of terror followed. Indiscriminate flogging, firing, bombing followed in its wake. In one of the streets, order was issued for the people to come and go from houses, crawling as four-footed animals.

The Hunter Report : Because of the stoppage of news, the rest of India looked helplessly at the sufferings of their countrymen in the Punjab. This hush was broken, when Sir Rabindra Nath Tagore protested against the happenings in the Punjab to the Governor-General and renounced his Knighthood. Sir Sankaran Nair also resigned from the membership of the Viceroy's Executive Council, as a protest against the Punjab wrongs. This created a stir in the official quarters and after a long period of six months, the Hunter Committee was set up in October, 1919 to investigate and report on the happenings in the Punjab. The Report of the Committee was published in March, 1920 and the orders of the Secretary of State thereon were passed in May, 1920. Meanwhile, the Government had already passed the Indemnity Act, absolving all those who were connected with the firing from punishment. In the Report of the Hunter Committee, an attempt was made to white-wash the whole crime. Sir Michael O'Dyer was allowed to go scot-free. General Dyer was only removed from service as a punishment for his guilt, which was described as "*an error of judgment.*" In the Report, it was stated that the conduct of General Dyer was "*based upon an honest, but mistaken conception of duty.*" Mr. Montagu also took the same view. In the house of Lords, speeches were delivered eulogizing General Dyer as a champion of the British Empire. He was presented with a sword of Honour and a purse of £2000. General Dyer had himself admitted that his object in firing was to strike terror in the whole of the Punjab and even outside to avoid such occurrences in future.

The Indian National Congress appointed its own Committee to investigate and report on the happenings. The Committee reported that the number of the dead and the wounded was larger. General Dyer was held responsible for a "cold-blooded, calculated massacre of innocent, unoffending, unarmed men and children, unparalleled for its heartlessness and cowardly brutality in modern times." In the Report of the Committee of which Mahatma Gandhi was also a member, adequate compensation was claimed for the families of the dead and the wounded, and the guilty were sought to be severely punished. The Government paid no heed to these demands. This shocked the whole being of Gandhiji and he was sadly disillusioned about his faith in the British as a people and in the British Government. The callous attitude which the Govern-

ment- adopted towards those who had been killed and wounded at Jallianwala and the way the Government had tried to white-wash and shield the crime of those who were responsible for the massacre, transformed Mahatma Gandhi from a co-operator in December, 1919, to a leader of the non-co-operation movement against the British in September, 1920.

The Khilafat Movement:- Turkey had fought in the world war I against the Allies. The Muslims of India had always recognised the sultan of Turkey as their religious Chief or Khalifa. The position of Muslims of India during war was embarrassing indeed, because their religious loyalty was to Turkey and political affiliation of Britain- still the Mussalmans of India whole-heartedly helped the British in the prosecution of war, because of British assurances, regarding Caliphate. When the war ended the news leaked out that the Allies were thinking of disrupting and dividing the Turkish Empire. Muslims of India became naturally agitated and perturbed over these ominous news. This led to the Khilafat agitation, whose objects were to stop the disruption of the Turkish Empire, to prevent the imposition of severe peace terms on Turkey and to preserve the spiritual headship of the Sultan.

An all-India-Khilafat Conference was held at Delhi on November 24, 1919, under the presidency of Mahatma Gandhi, who completely identified himself with the movement from its very inception. Gandhi Ji objected to the way in which the Government was breaking its pledges to Mussalmans of India regarding the fate of Turkey after the war. He seized the occasion as a great opportunity to cement the Hindu-Muslim unity and, in return to win the sympathy of Mussalmans for the national movement. Mahatma Gandhi advised Hindus to join the Khilafat agitation and thus to help Muslims in their hour of need. On the advice of Mahatma Gandhi, a deputation met the Governor-General under the leadership of Dr. Ansari to

apprise him of the apprise him of the injured feelings of Muslims; but nothing came out of it. In March, 1920, Maulana Mohammad Ali, along with his brother Shankat Ali, was deputed to go to England to support this cause. They also returned empty handed.

When the terms of the Treaty of severis, which decided the fate of Turkey, became public in May, 1920, the worst fears of Muslims came true. The Treaty was signed on August 10, 1920. The Turkish empire was to be partitioned and divided. It was to lose the whole of Thrace and the rich area of Asia Minor. The Arab provinces of the Turkish Empire were to be distributed between England and France as mandated Territories. The Sultan was to become a virtual prisoner of the Allied High Commission. There was also a move on the part of the Allies to deprive him of the spiritual headship of Mussalmans. Thus all the pledges given to Mussalmans during the war were broken. Turkey was subjected to a harsh treatment usually given to enemy countries defeated in a war.

In the hour of agony and despair for Muslims, Mahatma Gandhi advised them to begin a non-co-operation movement against the Government. This proposal of Gandhi ji was accepted by the Khilafat Committee on May 28, 1920. Two days later the all India Congress Committee decided to convene a special session of India National Congress to consider the question of launching a non-co-operation movement against the Government, as a result of which a special session of the Congress was held in September, 1920, at Calcutta, where the fateful resolution of launching non-co-operation movement was formally adopted by the India National Congress.

134 NATIONAL MOVEMENT AND CONSTITUTIONAL DEVELOPMENT.

Congress decides on Non-Co-operation:-

The decision of the congress of start a non-co-operation movement against the Government was truly a revolutionary step. It was for the first time that the Indian National Congress, as a body, was embarking on the policy of direct action the Government. It was a break from the method that the Congress had followed during the last 35 years, from the date of Birth. The method of "Political mendicancy" was discarded once for all.

We may summarise the causes which led to this revolutionary change in the method of the congress Mahatma Gandhi, to start with, was ~~not~~ a loyalist, a Co-operator, a true disciple of Gokhala, as is shown by the attitude of the congress in December, 1919, at Amritsar. Mahatma Gandhi stated that the Report of the Hunter Committee regarding the Jallianwala happenings, which became final in May, 1920, and terms of the Treaty of Sevres, which became public also in that month, changed his entire attitude towards the British Government. Hence, the two main immediate causes, which were responsible for this revolutionary step by the congress were the callous attitude of the Government towards the victims of the Jallianwala and their attitude regarding Turkey. The availability of a leader of the calibre of Mahatma Gandhi, who had already tested the efficacy of his weapon of non-violent civil disobedience or satyagraha, was another factor, which made it possible for the congress to adopt this course. Moreover, the liberals had left the congress in 1918. The Extremists were in complete charge of the congress, at the time when, the bold

decision was taken, in December, 1920.

Mahatma Gandhi was sure that whole-hearted co-operation of Muslims would be forthcoming in any movement of non-co-operation against the Government because Muslims were bitterly against the Government on account of the Khalafat issue, and the Hindus had given full support to Muslims, Mahatma Gandhi, therefore, considered the time ripe for taking up the resolution of non-co-operation at the special session of the Congress, held at Calcutta in September, 1920. C. R. Das, B. C. Pal, Pt. Malviya, Mrs. Annie Basant and Mr. Jinnah were opposed to it, Even Lal Lajpat Rai, who presided over the session, had no sympathy with it. Thus Mahatma Gandhi had to fight against heavy odds in getting the resolution for non-co-operation adopted.

by the Congress, which was eventually done by a narrow majority of 11 votes. This resolution was later reaffirmed by an overwhelming majority at the regular session of the Congress, held at Nagpur in December, 1920. The dissentient voices, which were heard at Calcutta three months ago, were now mostly drowned in a general chorus of approval for the movement.

The Nagpur session will remain memorable for making two vital changes in the constitution of the Congress. Hitherto, the goal of the Congress was the attainment of *self-government within the British Empire*. The goal was now declared to be the attainment of *swaraj*, which according to Mahatma Gandhi meant, "*swaraj within the British Empire, if possible and outside, if necessary*." *Swaraj* was used as a compromise word between those who wanted self-government within the British Empire and those who wanted to sever all connections with the British. Secondly, till then, according to the constitution, the Congress could employ only constitutional means to attain its objective. It was now laid down that the Congress could adopt *all peaceful and legitimate means* to achieve its end. This again was a compromise between those who wanted to stick to the constitutional means and those who advocated all possible means for the attainment of the objective. The net result of all these changes was that the constitutional method was, finally, declared to be inadequate for the emancipation of India. With the death of Lokmanya Tilak on 31st July, 1920, Mahatma Gandhi was now left in undisputed charge of the Congress. We may describe this as the beginning of the Gandhian Era in the political life of India. The sails of the Congress were resolutely set for a clash with the Government. Never again was the Congress to be accused of political mendicancy.

(**Programme of the Movement :** In the non-co-operation resolution passed by the Congress at Calcutta in September, 1920 and ratified at Nagpur in December, 1920, the Congress advised : (a) the surrender of titles and honorary offices ; (b) resignation from nominated seats in local bodies ; (c) refusal to attend Government levies, darbars, and official functions held by the Government officials or in their honour ; (d) gradual withdrawal of children from schools and colleges, owned, aided or controlled by the Government ; (e) gradual boycott of British courts by lawyers and litigants ; (f) refusal on the part of the martial, clerical and labouring classes to offer themselves as recruits in Mesopotamia ; (g) withdrawal by the candidates from elections to the Reformed Councils and refusal on the part of voters to vote for any candidate offering himself for election ; (h) the boycott of foreign goods. This may be described as the "negative or destructive side," of the programme, which meant the boycott of Councils, Courts, Colleges and the Government.

Apart from this, there was also a "positive or constructive side" of the programme. In place of Government educational

institutions, the resolution advocated the establishment of national schools and colleges all over India. Private arbitration courts were to be established for the settlement of disputes with the aid of lawyers in place of the Government Courts. The Congress organisations were to take the place of the Councils. The boycott of foreign goods was to be supported by a movement popularizing the Swadeshi cloth and by the revival of hand-spinning in every home and hand-weaving by weavers, who had abandoned their profession. A call for Hindu-Muslim unity was also made. The removal of untouchability was urged. Mahatma Gandhi declared that there could be no Swaraj without the removal of untouchability. The people were called upon to go through the ordeal of privations and sufferings, and to make utmost sacrifices for the winning of Swaraj, which was promised "within one year" by Mahatma Gandhi. Truth or *staya* was declared as the supreme strategy and non-violence or *ahimsa* was to be the dominating principle of the whole movement.

Progress of the Movement : The seed of the non-co-operation movement had really been sown during the satyagraha movement which was planned in 1919 against the Rowlatt Act. The blood of martyrs shed at Jallianwala Bagh watered and prepared the soil. Hence, when the call for non-co-operation came towards the end of 1920, the movement captured the imagination of the people from the very start. It continued to gather momentum throughout the year 1921. Many distinguished persons like C. R. Das, Motilal Nehru, Jawaharlal Nehru, Lajpat Rai, Vithalbhai and Vallabhbhai Patel and Rajendra Prasad left their lucrative practices at the bar to join the movement. Many prominent Muslim leaders like Maulana Mohammad Ali and Maulana Shaukat Ali—popularly called the Ali Brothers, Dr. Ansari and Maulana Abul Kalam Azad also joined the movement. Many students gave up studying in Government schools and colleges and national educational institutions like the Gujrat Vidya-pith, the Bihar Vidya-pith, the Benaras Vidya-pith, the Tilak Maharashtra Vidya-pith, the Kashi Vidya-pith, the Bengal National University, the National Muslim University of Aligarh, the Jamia Milia of Delhi, the National College of Lahore and many other national institutions were started all over the country. Many lawyers gave up their practice. Seth Jamnalal Bajaj subscribed a lakh of rupees for the maintenance of non-practising lawyers per year. The Swadeshi cloth became popular. Hand-spinning and hand-weaving got encouragement. Hindu-Muslim accord developed to an extent, never seen before or after. Liquor shops and foreign cloth shops began to be looked down upon and were often picketed. The evils of untouchability began to be realized, probably for the first time. The all-India Congress Committee at its Bezwada meeting in March, 1921 decided to collect a crore of rupees, and the amount was subscribed in a short time. Forty lakh volunteers were enrolled by the Congress and about 20,000 *charkhas* were manufactured. The litigant

public at places avoided law courts and settled their disputes by arbitration. Mahatma Gandhi surrendered his title of *Kaisar-e-Hind* and many people followed suit. The visit of his Royal Highness the Duke of Connaught, in connection with the inauguration of the new Constitution, was successfully boycotted and he was greeted by *hartals* almost everywhere.

It may, however, be admitted that 'the destructive or negative side' of the programme was not much of a success. The elections to the Reformed Councils were held more or less, in the usual manner. 2000 candidates contested 774 seats in the Councils. Only 6 seats were such, where no election was held for want of a candidate. Opportunists and loyalists filled the Councils and made them anything but representative of the people. Colleges, courts and Government offices continued much the same way. The movement on the whole was non-violent. But here and there the Government machinery came into clash with the picketers and non-co-operators and sporadic acts of violence were committed by the people.

Repression by the Government, boycott of the visit of the Prince of Wales and greater repression : The movement was progressing beyond expectation and the situation was getting out of the control of the Government. It was, eventually, decided by the Government that the movement should be suppressed and crushed. With this object in view, the Government began to indulge in indiscriminate beatings and forceful dispersal of meetings. The Seditious Meetings Act was passed and thousands of persons were arrested. Volunteer organisations were made a special target of attack by the Government. The Ali Brothers, who were in forefront of the movement, made speeches, which incited the people to violence. In April, 1921, as a result of Gandhi-Reading meeting, the Ali Brothers gave an assurance to the Government that they would not advocate violence in future. But even after this assurance, the Government continued its repression ; and the Ali Brothers, their inflammatory speeches. Very soon, thereafter, the Government announced the visit of the Prince of Wales to India. The time for the visit was chosen probably to invoke the traditional loyalty of the masses to the Crown and thus to wean them away from the movement. In July, 1921, the all-India Congress Committee decided, in view of the repressive policy of the Government, not to participate in the welcome of the Prince. This infuriated the Government still further.

On August 20, 1921, most terrible acts of violence were committed by the Moplahs of Malabar, which paralysed the administration in that area, for several days. The most unfortunate part of the uprising by the Moplahs was that many Hindus were also killed. As the Government machinery collapsed completely, Khilafat Republic was set up by the insurgents. Ali Brothers were arrested on September 17, 1921. The Working Committee of the

Congress justified the actions of Ali Brothers and in order to give expression to the popular resentment against the Government for arresting Ali Brothers, the Working Committee declared the observance of *hartal* all over India on the day of the arrival of the Prince in India.

This boycott of the visit of the Prince meant no personal disrespect to him ; but was adopted as a method to show India's resentment against the repression policy of the Government. The Prince landed at Bombay on November 17, 1921. A complete *hartal* was observed throughout Bombay by the public on that day. There were some clashes between the boycotters and the co-operators in which acts of violence were committed by both the sides. Mahatma Gandhi accepted full responsibility for violence committed by the public and condemned the excesses in strong language. The Government decided to use a greater repression. The Congress and the Khilafat Volunteer Organisations were declared unlawful. Public meetings were forbidden. But the Government failed to repress the tide of the popular upheaval. Orders of the Government were defied. Enrolment of members for the Volunteer Corps continued. Beating, lathi-charging and firing began to be indulged in by the Government still more indiscriminately. By December, 1921, C. R. Das, Motilal Nehru, Lala Lajpat Rai, Maulana Azad and many other top-ranking leaders were put behind the prison walls. Arrests were made all over India. The total number of arrested persons came in the neighbourhood of about 25,000.

In December, 1921, the Prince was to visit Calcutta. Lord Reading still desired a settlement with the Congress, because of the presence of the Prince in India. Efforts of settlement at Calcutta in December, 1921, before the visit of the Prince there, failed, because the Government was not prepared to release Ali Brothers which was made a condition precedent to any settlement by the Congress. Most of the prominent Congress leaders were now behind the prison bars. Mahatma Gandhi was spared, probably, because the Government was afraid of the consequences. When the Congress met for its Ahmedabad session towards the end of December, 1921, it was in a desperate mood. It decided to intensify the struggle and sanctioned the starting of civil disobedience movement. Mahatma Gandhi was appointed the sole executive authority of the Congress.

Suspension of the non-co-operation Movement : Armed with the resolution of the Congress sanctioning civil disobedience movement, Mahatma Gandhi wrote a letter in February, 1922 to Lord Reading, intimating that he would start civil disobedience movement after 7 days ; unless, in the meantime, the Government showed a change of heart by giving up its repressive policy. This was a hint for the release of the top leaders of the Congress, who were mostly in prison. But before this period of seven days' notice was over, on February 5, 1922, at Chauri Chaura, in Gorakhpur

District of U.P., 21 policemen and a Sub-inspector were burnt alive in a police station by an infuriated mob. This use of violence changed the whole course of future events in India. Mahatma Gandhi felt so much horrified at this act of brutal violence that he suspended the movement at once, which was a shock to many congress men.

This action of Mahatma Gandhi was bitterly resented by the rank and file of the congress, and Muslims in particular, who never appreciated Mahatma Gandhi's attitude about truth and non-violence in a political struggle. The congress leaders like C.R. Das, Motilal Nehru, Jawaharlal Nehru, Lajpat Rai, Ali Brothers and others did not appreciate the action of Mahatma Gandhi in switching off the movement, in such a fashion and at such a critical stage. Mahatma Gandhi was, probably, right in suspending the movement. Jawaharlal Nehru, later on, justified the action of Mahatma Gandhi, as practical politics. The Chauri Chaura incident was not the only act of violence committed by the people. It was only 'the last straw'. There was no discipline left in the rank and file. Very few people had honest faith in Mahatma Gandhi's method of non-violence. The leaders were mostly in jail. Masses would have indulged in more violence in the absence of the leaders. "This would have been crushed by the Government in a bloody manner and a reign of terror established, which would have thoroughly demoralised the people" Romain Rolland, who was a great admirer of Mahatma Gandhi while appreciating the moral value of this act of Mahatma Gandhi said. "It is dangerous to assemble all the forces of nation, and to hold the nation

Panting, before a prescribed movement, let one's arm drop and thrice call a hal just as the formidable machinery has been set in motion." As a result of all this criticism, Mahatma Gandhi's popularity reached the lowest ebb. In those day of despair and darkness, some even remembered Lokmanya Tilak "who never advanced too far, never faltered and never retreated."

Arrest and imprisonment of Mahatma Gandhi. The Government took advantage of the wave of resentment that was sweeping against Mahatma Gandhi, arrested him on March 10, 1922 and sanctioned his prosecution. Government had withheld this action earlier, lest it should invite the wrath of the nation. Now there was no such danger. The arrest hardly produced a ripple in the people, who were stunned and paralysed by the events. In the words of Mr. Rushbrook Williams, the arrest "came when Mahatma Gandhi's political reputation was at its nadir, when the enthusiasm of his followers had reached the lowest ebb". The historic trial of Mahatma Gandhi started at Ahmedabad on March 18, 1922. Mr. Broomsfield the sessions Judge, tried the case. Mahatma Gandhi pleaded guilty to the charge of spreading disaffection against the Government. He said that he would do the same again, if set free. The statement that he made in his defence is a classic pronouncement asserting the right of a subject nation to be free and to agitate for it. The judgment of Mr. Broomsfield was also remarkable for the noble sentiments expressed therein.

140 NATIONAL MOVEMENT AND CONSTITUTIONAL DEVELOPMENT.

Mahatma Gandhi was sentenced to 6 years simple imprisonment. For the time being, his voice was hushed non-co-operation movement apparently came to an end. The fire of nationalism, however, remained smouldering. For some time, the struggle was continued in the Legislatures. Mahatma Gandhi was released on February 5, 1924 before the expiry of 6 years, on medical grounds after an operation of appendicitis.

Defects of the Movement:- The destructive or negative programme of the movement was, somewhat, unrealistic. Even the Civil Disobedience Enquiry Committee set by the Congress came to the conclusion that the non-co-operation achieved nothing. Its only merit lay in its appeal as a protest. The promise of Swaraj within one year was a little too optimistic. The introduction of the Khilafat question, which was admittedly a religious issue into the national movement, was unfortunate. It introduced religious fanaticism into the Indian politics. The atrocities committed by the Moplahs of Malabar on the Hindus during the movement could be directly traced to it. The Khilafat demand was included by the congress to hold the sympathies of Muslims for the national movement. But it was hardly a right cause. Even the Turks, for whose benefits the issue was, discarded Khilafat as "a medieval whose benefits the issue was raised, discarded Khilafat as "a medieval jargon" in 1922 under Kamal Pasha, when Turkey was declared a secular state and the Khalifa was exiled. The sudden suspension of the movement increased Hindu-Muslim tension because the Muslim mind could not appreciate the implications of non-violence in a just cause.

Contributions of the Movement to The National Struggle:- In spite of all these defects, the movement admittedly helped the

cause of nationalism in India. It hastened the advent of Swaraj. It was the first truly revolutionary movement in India, since the birth of the Congress. More constitutionalism was buried once for all. Revolt entered into the spirit of the people. Henceforth, the Congress accepted, for good, the policy of direct and self-reliant action. It decided to depend on its own strength for achieving the objective of Swaraj. It was no longer shy of defying the Government. It was the first truly mass movement on an all India scale. It was, in this sense, that it was a people's movement. To work or strike for freedom was no longer confined to the intelligentsia only. Moreover, the movement made the masses in general, and the workers in particular, fearless in crossing sword with the Government. Awe of the armed might of the Government was gone. Resentment and anger against the Government was no longer only whispered, it began to be openly uttered and discussed. The law of sedition began to be criticized. Jailz began to be looked upon

as places of pilgrimage for the patriots. Constructive work of the Congress received a fillip. Hand-spinning, hand-weaving and *swadeshi* cloth became popular. The *Khadi* became the grand uniform of the Indian patriot. Prohibition got encouragement. The Congress and the masses had the experiences, thrills and lessons of the first open clash with the Government. The Congress leaders realized the nature and value of *the real sanction*, viz., popular support with which they were to back all their future demands for the political emancipation of the motherland.

LIBERALS IN COUNCILS

We have already noted that before Mr. Montagu left for England in 1918, he had assured himself of the formation of a Party of important men, who would be willing to work the Reforms. The National Liberal Federation was formed in 1918, just after Mr. Montagu left. The Moderates went out of the Congress, never to come to it again. The first elections under the Reforms were held towards the end of 1920, and were boycotted by the Congress. The Liberals fought the elections and were returned in large numbers. Their policy towards the Reforms was that of "responsive co-operation", i. e., "co-operate where you can and oppose where you must." In the Central Legislature, the Liberals tried to bring about a revision of the Constitution. As early as September, 1921, Rai Bahadur Majumdar moved a resolution in the Assembly, "urging the establishment of full Provincial Autonomy and the transfer of all central departments, except defence, foreign affairs, and the political department, to popular control in 1924, and the conferment of full Dominion Status in 1930." The Government of India, though it opposed the motion, ultimately agreed to convey to the Secretary of State for India the views of the Assembly that the revision of the Constitution was essential at a date earlier than 1929. The Liberals co-operated with Government in working the Reforms. They were successful in getting repealed some undesirable Acts. The Liberals were instrumental in placing some useful Acts on the statute-book, e. g. the Press Law Repeal and Amendment Act, 1922, the Special Law Repeal Act, 1922, the Indian Criminal Law Amendment Repealing Act, 1922, and the Criminal Law Amendment Act, 1923, besides passing the famous resolution stated above. The Government had nothing to complain against the Liberals. The Simon Report testifies that the first Legislature took "an effective and honourable part in the working of the new constitution." But certain acts were done by the Government, which provided a convenient handle to the Extremists to proclaim that the Liberals had achieved nothing worthwhile.

CHAPTER XVI

THE SWARAJ PARTY

Causes of the formation of the Party : Various causes were responsible for the formation of the Swaraj Party. Firstly, after the suspension of the non-co-operation Movement and the arrest of Mahatma Gandhi, much was not left in the national movement, which could have popular appeal. The constructive work alone could not lead to political emancipation. Some thing more dynamic and virile was needed to put life in the despondent nation. A wave of dis-satisfaction was sweeping against the methods of Mahatma Gandhi, especially because of the unceremonious manner in which he had ended the struggle. C. R. Das in Bengal, Pandit Motilal Nahru in North India, and N. C. Kelkar in Deccan, voiced dis-satisfaction against the policy of Mahatma Gandhi. Non-co-operation had not been much of a success.

Moreover, the Hindu-Muslim front which was evolved during the Khilafat days had broken down. It was difficult for Muslims, as a community, to appreciate the underlying principle and ethics of non-violence. In Decemler, 1925, even Mohammad Ali, who was the chief Muslim disciple of Mahatma Gandhi during non-co-operation days, disowned the Gandhian way and adopted communal politics, as his creed.

Besides, the Government had adopted a policy of stern repression towards those who indulged in anti-Government activities. The Council entry was, therefore, adopted by some as affording a safe political career. In August 22, 1922, Lloyed George, the British Prime Minister, delivered his famous "steel frame" speech, in which he emphasized the pivotal role of the Indian Civil Service in the administration for a very long time to come. If this was the policy of the British Government, co-operation with it was impossible, and obstruction was left as the only course. The Government also started pompering the Princes, to make them act as pillars of Imperialism against the progressive forces. Lastly, the response of the Government to the co-operative efforts of the Liberals was too poor to win for the Party popularity in the masses. On November 2, 1922 the British Government declared that no early revision of the Constitution was possible. The Princes Protection Act was certified by the Governor-General, as a Law, although it was rejected by the Assembly. Salt tax was doubled with the use of the extraordinary powers of the Governor-General, although it was condemned and the Budget containing it was thrown out by the Assembly.

When the second General Elections under the Reforms came, the Liberals had no worthwhile achievements to their credit in the eyes of the voters, on the basis of which they could ask for a second chance from the electorates. The uncompromising attitude of the Government was also responsible for the defeat of the Liberals and the success of the Swarajists, who appealed on the basis of starting non-co-operation with the Government.

The formation of the Party : Immediately after the suspension of the non-co-operation movement and the arrest of Mahatma Gandhi the question began to be mooted, whether it would not be advisable, under the circumstances, to capture the Councils. C. R. Das and Moti Lal Nehru openly began to preach the gospel of entering the Councils in order to 'end or mend them.' At the Gaya session of the Congress held in December, 1922, under the presidentship of C. R. Das, those who stood for entering the Councils could not carry the Congress with them. Orthodox followers of Mahatma Gandhi, who began to be called 'no-changers', under the leadership of C. Rajagopalachari, were able to defeat the objective of those who stood for entering into the Councils. After the Gaya session, C. R. Das resigned from the Congress to organise the Swaraj Party, with a view to capturing the Congress, before the General Elections of 1923. A special session of the Congress was held in September, 1923 at Delhi. In between these two sessions, the salt tax was doubled, although the Assembly had rejected the budget containing this item. This swelled the ranks of those Congressmen who stood for some sort of clash with the Government. In this special session, which was held under the presidentship of Maulana Azad, the programme of 'Council entry' was officially adopted by the Congress. Gandhiji was released in February, 1924, on grounds of ill health. He, evidently, did not like the Swarajist programme. He was also not in a position to revert to active non-co-operation. Leaders and the masses were simply not prepared for it. So in 1925, a compromise was reached between the two wings, and freedom was given to Congressmen to do either 'Council work' or 'constructive work'. The proverbial 'long rope' was given by Mahatma Gandhi to the Swarajists till they and the masses were, once again, prepared to follow his own method of civil disobedience.

Aims and Principles of the Swarajists : The ultimate aim of the Swarajists was the same as that of the Gandhites, namely, to win Swaraj, which meant Dominion Status within the British Empire. But their method was different. They had no faith in civil disobedience. They wanted to take part in the elections in order to infuse enthusiasm and carry the message of nationalism to the masses. They wanted to capture seats in the Legislatures in order to prove their strength with the masses and in order to wreck the citadel of bureaucracy from within. This was considered necessary to prevent undesirable persons from capturing seats in the Legislatures

and thus lending a show of popular support to the Government by co-operating with it, as the Liberals had done. 'Obstruction' to the Government was their key-note. Their immediate objective was to make the Montford Reforms unworkable. They stood for 'mending or ending' the Act of 1919. They wanted to destroy the then prevailing constitutional structure in order to build a new and a better one, on its ruins. They contemplated the rejection of all vital legislative programme of the Government as well as the budgets in order to bring the Governmental machinery to a standstill. They refused participation in all Government bodies and functions. This was the destructive side of the programme of the Swarajists. There was also a constructive side. In the Legislatures, they wanted to pass resolutions, containing constructive proposals for further constitutional advancement and laws necessary for the growth of healthy national life. They also stood for giving whole-hearted support to the constructive programme of Mahatma Gandhi.

It was stated on their behalf that if their method failed to bring about the required change in the Government they would, unhesitatingly, join a civil disobedience movement under the leadership of Mahatma Gandhi. In the manifesto issued in 1923 by the Swarajist Party, it was stated to be the first duty of the Party to demand that the right of the Indian people to control the machinery and system of Government should at once be conceded and given effect to. If the right itself was conceded, well and good. "But in the event of the Government refusing to entertain the demand, it shall be the duty of the members of the Party elected to the Assembly and the Provincial Councils, if they constitute the majority, to resort to a policy of a *"uniform continuous and consistent"* obstruction to make Government, through the Assembly and the Councils, impossible.

Success and work of the Swarajists : The general elections of 1923 were fought by the Swarajists on the basis of the above-mentioned programme. As a result of the elections, the Swarajists returned at the top of the poll and the Liberals were almost wiped off. The Swarajists won a clear majority in C. P. and a dominant position in Bengal and the Central Legislative Assembly. In U. P. and Bombay, the influence of the Swarajists was great and, at times, decisive.

Pt. Moti Lal Nehru was the leader of the Swarajists Party in the Legislative Assembly of India. The Party won 45 seats out of 145—thus it was the largest Party in the Assembly. Because of the able leadership of Pt. Motilal Nehru, the Party was able to enlist the support of the Nationalists and some Independents, and thus commanded a working majority. As early as February 8, 1924, Pt. Nehru was successful in getting passed by the Assembly, by an overwhelming majority, in which all the elected members voted for the motion, a resolution, "that steps should be taken to have the

India Act, 1919 revised with a view to establish full responsible Government in India, and for that purpose to summon, at an early date, a representative Round Table Conference to recommend, with due regard to the protection of the rights and interests of important minorities, a scheme for the Constitution of India; and after dissolving the Central Legislature to place it before the newly elected Indian Legislature for its approval and to submit it to the British Parliament to be embodied in a statute."

The Labour Party came into office with Mr. Ramsay Macdonald as Prime Minister in January, 1924. Macdonald was known to be sympathetic towards Indian aspirations. Hopes, therefore, sprang high in India. The demand contained in the resolution was, however, summarily rejected by the British Government. The result of this disillusionment was that the Swarajists and the other nationalist leaders in the Assembly stiffened their opposition and policy of obstruction. In desperation, they took up the position: "no redress of grievances, no supplies". Acting on this principle, they rejected four important demands for grants and the Finance Bill for 1924-25. The appeal of the Governor-General for reconsideration was also ignored. The Governor-General had to restore the grants and pass the Finance Bill by using his extraordinary power of certification. The budgets of 1925-26 and 1926-27 were similarly rejected and certified by the Governor-General. A series of defeats were thus inflicted on the Government. Resolutions were passed against the determined opposition of the Government, demanding release of certain political prisoners and asking for the repeal of the Regulation III of 1818. Invitations to functions and parties held by the Governor-General as well as in his honour were not accepted. Many a time the Party staged a walk out to show resentment against the attitude of the Government.

Report of the Muddiman Committee : One tangible outcome of the resolution of February, 1924 was the appointment of the Reforms Enquiry Committee to report on the working of Dyarchy with Sir Alexander Muddiman—the Home Member, as the President. Pt. Moti Lal Nehru refused invitation to become its member. The Report of the Committee was not unanimous. The majority found nothing inherently wrong in Dyarchy as a matter of principle and suggested some minor changes to make it more acceptable. The minority came to the conclusion that the basic principle on which Dyarchy stood was wrong and hence a radical change was needed. In September, 1925, the Governor moved a resolution in the Assembly for the acceptance of the principle underlying the majority Report. Pt. Nehru subjected Dyarchy to a scathing criticism, condemned it as unworkable, and carried an amendment, against the Government resolution by an overwhelming majority, in terms similar to the resolution he had moved in 1924.

Work in Provinces : In C. P. the Swarajists being in absolute majority, there was no difficulty in putting Dyarchy out of action. The Governor had no alternative but to take the administration of even the transferred subjects in his own hands. In Bengal although the Swarajists were not in an absolute majority, yet C. R. Das was able to enlist the support of some Muslims, and was able to make Dyarchy unworkable. On February 28, 1924, C. R. Das declared that his Party would oppose the formation of a Ministry in Bengal, "unless and until the present system of Government is altered and there is a settlement between the Government and the people of this Province, on a real change of heart, without which there can be no guarantee for complete self-government." Thus Dyarchy failed in C.P. and Bengal between 1924 and 1926 because the Swarajists were opposed to its working. In other Provinces the Party continued to make, here and there, demands for constitutional advancement.

✓ **Swarajists drift toward Co-operation :** C. R. Das died in 1925, which weakened the Swarajist Party a good deal. In the Provinces, where the Party was not in a majority, wholesale obstruction was futile, if not impossible. In the Legislative Assembly, the Nationalist Party, which was led by Pt. Madan Mohan Malviya and L. Lajpat Rai, came to the conclusion that indiscriminate opposition of the Government was harming the interests of the Hindus. The Swarajists were not able to bring the machinery of the Government to a standstill. Even in C. P. and Bengal, the King's Government was still going on. Mahatma Gandhi and his orthodox followers remained irreconciled to the principles of the Swarajists. In his last days, even C. R. Das had begun to realize the futility of obstruction for the sake of obstruction. The Government, on its own part, left no stone unturned to bring the Swarajists round to a policy of co-operation.

All this led to a "gradual watering down of the original policy of the Swarajists of undiluted opposition." An important section of the Party freely began to advocate the advantages of the policy of *responsive co-operation*, instead of the policy of *wholesale obstruction*. Thus, there was a split in the ranks of the Swarajists. In 1924, the Swarajists accepted seats on the Steel Protection Committee. In 1925, Pt. Moti Lal Nehru accepted membership of the Skeen Committee, which was appointed to inquire into the possibility of more rapidly Indianizing the Army. Rot set in after the death of C. R. Das. In 1925, Mr. V. J. Patel, who was a leading Swarajist, allowed himself to be elected as the Speaker of the Central Assembly. S. B. Tamble, another prominent Swarajist of C. P., became an Executive Councillor in C.P. Pt. Moti Lal Nehru threatened severe disciplinary action against those who were deviating from the mandate of the Party ; but this drove some important members of the Party into an open revolt. All these desertions weakened the Party. In the elections of 1926, the Swarajists did not fare well. By the end of 1926, no body talked of carrying on the policy of "uniform

continuous and consistent" obstruction against the Government and "the wreckers had lost much of their fire."

Appraisal of the Policy of the Swarajists : There was an inherent contradiction in the policy of the Swarajists. If the Government was to be obstructed at all points, why fight elections under the Constitution and enter the Councils. Thus the policy was illogical. It was impracticable in the sense that there was nothing in the policy, which could bring the machinery of the Government to a standstill. It was a weak policy too, because at least some of those who joined were evidently not prepared to undergo the sufferings involved in following a policy of civil disobedience. If it was wrong to let undesirable persons to become members of the legislature, it could not be right to let such persons become Ministers and Councillors. "The Swarajists," according to Zacharias, "were in the position of people, who wanted to keep their cake and eat it at the same time. They considered it necessary, in order to retain their popularity, to talk Extremism and yet were resolved to easy parliamentarism. As a consequence, the Swarajists were driven to a course of quibbling, as to when co-operation was non-co-operation." The judgment is severe, no doubt, but there is, certainly, an element of truth in it. No Swarajist courted imprisonment during 1924-26. Of course, none received *lathi* blows.

Let us not, at the same time, fail to record the utility of the work of the Swarajists to the national movement. The whole nation was plunged into diffidence and despondency in 1922, when the non-co-operation movement was switched off. Non-co-operation on non-violent lines had failed : movement was impossible on violent lines. Mahatma had proved a false prophet : there was no Swaraj within sight. It was not possible to goad the masses into action over again immediately after the collapse. The nation needed a respite. The Swarajists kept the torch of nationalism burning and infused enthusiasm in the masses at a time, when non-co-operation had evidently failed and the constructive work of the Congress alone had no mass appeal. Only opposition or obstruction to the Government could whip up enthusiasm in the masses.

The demand for a Round Table Conference, to which the Government agreed in 1930, was first formulated by the Swarajists and pushed through the Assembly. The appointment of the Muddiman Committee was a concession to the demands made by the Swarajists. The Report contains useful *data* on the working of Dyarchy, whose inherent weaknesses were exposed by the minority Report. The Simon Commission was appointed two years earlier to report on the necessity of further Reforms also because the Swarajists had, throughout, insisted on the revision of the Constitution, at the earliest possible time. No doubt, the Swarajists wanted to avoid a direct clash with the Government ; so did the whole Congress till 1920. The working of the Swarajist

Party in the Legislative Assembly of India exposed the autocratic and irresponsible nature of the Government. The series of defeats inflicted by it on the Government, refusals of supplies and rejection of the Government budgets were acts which enlivened the masses and discredited the Government at home as well as abroad. It kept up the spirit of resistance among the people, against the foreign rule, which paved the way for eventual independence. The Councils were no longer praised. Very few Liberals were elected thereafter. The Government could no more claim that the elected representatives of the people were co-operating with it.

Hindu-Muslim tension and the release of Mahatma Gandhi :

With the abolition of the Khilafat in Turkey in 1922, no *raison d'être* was left for the Khilafat agitation. The Muslim League, which was almost wholly eclipsed by the Khilafat Party during the days of the Khilafat agitation, once again came to the fore, with all its communal fanaticism. The non-co-operation movement, which was also a factor contributing to the Hindu-Muslim unity, had ceased to exist even earlier. With the end of the Khilafat, Muslims no longer required the support of the Hindus. The divide and rule policy of the bureaucracy and their secret agents created further troubles and dissensions amongst the two major communities. Signs of Hindu-Muslim discord had already appeared during the riots of Moplahs against the Hindus in 1922. In 1923, there were no less than eleven Hindu-Muslim riots.

Mahatma Gandhi was released on February 5, 1924 on ground of ill-health. He was horrified to see the extent of the communal tension in the country. He did not see eye to eye with the Swarajists; nor he found the Congress or the masses prepared for starting the civil disobedience movement. Hence, he began to give all his attention to the constructive work of the Congress, communal tension and the problem of untouchability. In September, 1924, he undertook 21 days fast as a self-imposed penance for the sins of those who had committed communal riots, on either side. As a result of this fast, a Unity Conference was held at Calcutta to devise ways and means in order to bring about Hindu-Muslim accord. But its good effect lasted only for a year or so. In 1926 and 1927 the number of riots increased to about thirty. Hindu-Muslim accord ill suited the ambitions of a group of politicians, reactionary elements and vested interests in the country and the designs of the British bureaucracy. By the year 1926, the glamour of the programme of the Swarajists was all gone and Mahatma Gandhi, though wholly absorbed in finding a solution of the communal problem, was once again brought to the helm of affairs in the Congress.

CHAPTER XVII

SIMON COMMISSION AND NEHRU REPORT

In the year 1927, the national movement was at its lowest ebb. India had almost ceased to think of constitutional reforms, in view of the Hindu-Muslim riots. It was left to the British Government to give the movement a fillip and to ignite the smouldering fire over again. The announcement of the appointment of the Statutory Commission on November 8, 1927 gave the signal for an unprecedented political agitation in the country.

Under section 84 of the Government of India Act, 1919, a Statutory Commission was to be appointed "at the expiration of ten years after the passing of the Act,...for the purpose of inquiring into the working of the system of Government, and the development of representative institutions in India, with a view to extend, modify or restrict the degree of responsible government then existing in India." In view of this section, a Commission was to be appointed in 1929. It was appointed in 1927, i.e., two years earlier. Outwardly, this was done as a concession to the Indian demand for an early revision of the Constitution. Two more explanations are usually put forward. One is that the Conservative Government decided to send the Commission in 1927, because it was a year of the worst form of communal riots in India: so that Commission should form a poor impression of the Indian social and political life. Another is that the general elections were to be held in England in 1929 and there was a great possibility of the Labour Party coming into power. If the Commission had been appointed two years later, the task might have fallen into the hands of the Labour Government, which might not have safeguarded the Imperial interests so well. Prof. A. B. Keith is of the opinion that the appointment of the Commission was expedited because of the growth of the Youth Movement in India.

The Commission was to consist of 7 members of the British Parliament, with Sir John Simon as its chairman. The most objectionable feature of the Commission, from the point of view of Indians was its all-white complexion. Not a single Indian was considered fit to undertake this inquiry. It was stated by some spokesmen of the Government that as only members of the Parliament could report to the Parliament, Indians could not but be excluded. If that was so, there was no justification for not appointing even Lord Sinha who was a member of the British Parliament. It was also said that there were so many groups and sections of people in the

Indian political life that it was impossible to include some without offending others, or making the size unwieldy. Probably, the British Government wanted to carry into practice the latter as well as the spirit of the Preamble to the Act of 1919, that "the British Parliament must be the judge of time and measure of each advance."

The composition of the Commission was taken to be an insult to the dignity and national self-respect of India. Its composition was condemned even by the Muslim League, the Liberal Federation and the Hindu Maha Sabha. It was decided to carry out a social as well as a political boycott of the Commission. When the Commission landed in Bombay on February 7 1928, it was greeted with a country-wide *hartal*. The boycott of the Commission was successful beyond all expectations. The Commission was confronted with *hartals*, wild demonstrations, black flags, and slogans of 'Simon, go back', everywhere, it went. A few voices, which wanted to accord a welcome to the Commission, were lost in the chorus of condemnation. In Lahore, Lala Lajpat Rai who was ailing at the time led a mammoth procession of demonstrators against the Commission. He was given several lathi blows by the police, as a result of which he died some weeks later. The 'Lion of the Punjab', when wounded, roared: "The lathi blows that are hurled on me will one day prove as nails in the coffin of the British Empire". In the United Provinces, Jawahar Lal Nehru and G. B. Pant were similarly molested. It was in this atmosphere of uncompromising hostility that the Commission continued and completed its inquiry. It visited India twice for the purpose; and its report was published in May, 1930, after a labour of two years.

The Simon Report : The Commission recommended, in the first place, that Dyarchy, because of its inherent defects, should be scrapped and the whole field of Provincial administration should be entrusted to Ministers responsible to the Legislature. Retention of the reserved subjects was considered undesirable, because it meant continuance of the control over that part of the Provincial administration by the Central Government and the Secretary of State. "Each Province should, as far as possible, be mistress in her own house", including the control over the Departments of Law and Order and Finance. Secondly, safeguards were considered necessary for some specific purposes, like the maintenance of peace and tranquillity of a Province and the protection of the legitimate interests of the minorities. These safeguards must be provided, in part, by the grant of special powers to the Governor. Thirdly, a unitary type of Government, as then existed, was considered unsuitable for India. It was visualised that, sooner or later, India should become a federation, "not merely in response to the growth of Provincial loyalties, but primarily because it must embrace all India; and it was only in a federation that the States could be expected, in course of time, to unite with the British India," which

was not only desirable, but even inevitable. Fourthly, in order to help the growth of political consciousness in the People, "franchise should be extended; and the Legislature enlarged." The immediate adoption of universal adult franchise was considered as impracticable. It would mean putting more than 100 million names as voters instead of the 6½ millions then registered. Fifthly, no substantial change was recommended in the Centre. The introduction of Dyarchy at the Centre was considered absolutely undesirable. The whole of the Central Government must remain irremovable by the Central Legislature, as before. A strong and stable government at the Centre was considered essential, "while the Provincial Councils were learning by experience to bear the full weight of new and heavy responsibilities." "This position of the Central Government was not intended to last indefinitely. The Commission looked forward to the possibility of a Federation to include the States, which would render it possible to reconsider the issue of the responsibility of the Central Government."¹ In order to bring the Provinces and the States together with a view to welding them in a single Federation, "a Council of Greater India should be set up, representing both British India and the States, to discuss, in a consultative capacity, all matters of common concern, a list of which should be drawn up and scheduled. The preamble of the new Act, further-more, should record the desire to bring about a closer association between the two parts of India." Sixthly, "the method of periodical Parliamentary inquiry should be abandoned, and the new Constitution should be so elastically framed as to enable it to develop by itself." This was evidently recommended to pacify the resentment against such inquiries, felt by the Indian nationalist opinion. And lastly, the method of indirect election, through the Provincial Councils, was recommended for both the Houses of the Central Legislature.

Appraisal of the recommendations of the Commission : Judging in the light of the Government of India Act, 1935, the recommendations of the Simon Commission were no worse. In fact, most of the recommendations found a place in the subsequent Act. Of course, safeguards were recommended against full responsible governments in the Provinces; but what came in 1937 was even worse in this matter. The Commission failed to mention the future goal of India as Dominion Status, which was rightly resented. The wholly irresponsible Central Government and the indirect election to the Central Legislature recommended were retrograde steps. Anyhow, the recommendations of the Simon Commission were not given the consideration they deserved, because of the ill-feeling that had generated in the Indian mind, on account of its all-white complexion. Observations regarding the Federation and the future role of the State were prophetic.

1. A. B. Keith : Constitutional Development of India, pp. 293-94.

Provincial autonomy, as conceded in 1937, was no better, if not worse. Some say that it was, perhaps, not right on the part of the Indian progressive opinion to repudiate the report altogether. If it had been accepted, fully responsible governments in the Provinces that came in 1937 might have been achieved earlier.

THE NEHRU REPORT

Lord Birkenhead, the Conservative Secretary of State for India, twice challenged the Indian leaders to produce a constitution acceptable to all political parties in India. He taunted Indians for their incapacity to produce a joint constitution in the House of Lords on July 7, 1925 and hurled a similar challenge in 1927, while moving for constituting the Simon Commission. There was no sense, he argued, in boycotting the Commission, when the Indians were unable to frame a constitution themselves, acceptable to all. This time, the challenge was accepted by the Congress and an All-Parties Conference was called at Delhi on February 28, 1928. As many as 29 organizations were represented. (After discussing preliminaries and fundamentals, it adjourned to meet again in Bombay on May 19, 1928, where time a Committee of 9 persons was appointed to draft a constitution for India. The Sub-Committee had as many as 25 sittings and was ultimately successful in drafting a constitution, acceptable to all the nine members. The All-Parties Conference met again at Lucknow, under the Presidentship of Dr. Ansari and ratified the constitution drawn by the Sub-Committee.)

Main Provisions : (1) In the first place, the basis of the constitution asked for was that India should be granted a full Dominion Status forthwith. Secondly, responsible Governments should be provided both at the Centre as well as in the Provinces. Responsibility of the Cabinets was to be joint or collective. There was to be a bi-cameral Legislature at the Centre, but not in the Provinces. The Lower House of the Central Legislature as well as the Provincial Councils were to be directly elected on the basis of adult suffrage. The Upper House at the Centre was to be indirectly elected by the Provincial Councils. The life of the popular House was to be 5 years. The Central as well as the Provincial Cabinets were not removable during the first three years of the constitution, except for corruption, etc. After the initial period of three years, a vote of censure with two-thirds majority in the Central as well as the Provincial Legislatures involved an obligation on the government concerned to resign. In view of the mercurial position of the parties, these provisions were considered necessary to ensure stability of the governments. Thirdly, a full-fledged federation for India was considered only as a possibility. Need for autonomy to the Provinces was, however, admitted. Powers between the Centre and the Provinces were to be divided on a federal basis. Residuary powers were to be possessed by the Centre. This was done, on the

lines of the Canadian Constitution, to make the Centre strong. Fourthly, provisions suggested for Defence were cautious. A Committee of Defence was to be set up, with the Prime Minister, the Minister of Defence, the Minister of Foreign Affairs, the Commander-in-Chief, the Commanders of Air and Naval Forces, the Chief of General Staff and two other experts as members with advisory functions, on military affairs. The budget for Defence was subject to the vote of the House of Representatives (name given to the popular House of the Central Legislature). But in case there was a foreign aggression or there was a reasonable apprehension of its being committed in the near future, the Government was authorized to incur any expenditure of Defence. All rules and regulations concerning discipline and maintenance of the Forces were to be made on the recommendation of the Committee. Fifthly fundamental rights were to be incorporated in the Constitution, which were moderately worded. Sovereignty was to belong to the people. Protection was assured to depressed classes, women, capital and labour. Duties of citizens were not included in the constitution. Safeguards were to be provided for the minorities, assuring them fullest liberty of religion, language and culture. This was done to create confidence in the minds of the minorities. Sixthly, the vexed communal problem was courageously tackled. Separate electorates were declared to be harmful and hence were ruled out. Joint electorates were to be introduced. Reservation of seats for minorities was provided in Provinces only to Muslims, who could also contest additional seats. The creation of a new Province of Sind was recommended and N.W.F. Province was to be made a full-fledged Province. This was done to provide a majority to Muslims in four Provinces. Seventhly, a Supreme Court was to be established as the final Court of Appeal in India. All appeals to the Privy Council were to be stopped. And lastly, the problem of the Indian States was also considered. Rights and privileges of the Princes were to be protected, but they were told to hasten the introduction of responsible form of governments in the States, because that was essential for welding them into an all-India federation. The new government was to take up all the existing rights and privileges of the British Crown over the States. In other words, Paramountcy was not to lapse, but was to be passed on to the new government, as the successor of the British Government.

Reactions to the Nehru Report : After its final ratification by the All-Parties Conference at Lucknow in August, 1928, the Report came under the consideration of various Parties separately. It was approved by the Working Committee of the Congress. Some of the Sikhs were not satisfied with its communal provisions. Either no reservation, etc., should have been provided at all and if it was done, rights of Sikhs as a minority should also have been recognized. Some Harijans also thought that their rights were ignored. Amongst the Muslims, in the final stage, only the nationalist Muslims supported the scheme. The All-Parties Muslim Conference met at

Delhi on December 31, 1928 and rejected the scheme. Even Maulana Mohammad Ali declared his opposition to the Nehru Report. Mr. M. A. Jinnah was opposed to the scheme from the very beginning. His famous Fourteen Points were presented by the Muslim League, as an alternative to the Nehru Report.

The Report was too progressive to be accepted by the Government. The Report was, admittedly, an act of great constructive statesmanship. It was a comprehensive document, which grappled with every problem from the nationalist point of view. No one will fail to notice an enormous resemblance between the Nehru Report and the Constitution that was adopted by free India in 1949. The Nehru Report may be described as a 'Blue Print' of our present Constitution, which is probably the greatest compliment that can be paid to it. Essentials in both are the same. It was the first attempt made by Indians in recent times to devise a constitution for themselves. Whether we look to the provisions concerning minorities, or fundamental rights, or Defence, every where we find abundance of a mature judgment. From the Report it appears that the Indian leaders were quite clear in their mind even in 1928 as to what type of constitution they wanted for a free India.

DOMINION STATUS OR COMPLETE INDEPENDENCE

The injured feelings of the country during 1927, due to the composition of the Simon Commission, were expressed by the Congress at its annual session in Madras, when a resolution was passed "that the political goal of the Indian people was national independence." Mahatma Gandhi was frankly disappointed, when he heard about this resolution, because he was not in favour of severing connections with Britain. But the rank and file in the Congress felt that the appointment of the type of Simon Commission was a clear proof that no good could come out of our relations with the British people. The Nehru Report was, however, content with mere Dominion Status.

In September, 1928, when the Congress Working Committee endorsed the Nehru Report, Mr. Jawahar Lal Nehru resigned his secretaryship of the Congress, because the goal had been diluted to Dominion Status. The British Government seemed to have been satisfied after giving India the Simon Commission and was merely looking forward to its Report as a solution of the constitutional deadlock in the country. It looked to the Nehru Report with indifference, if not apathy. In the Calcutta Congress of December, 1928, where the question of ratification of the Nehru Report was to be taken up, right royal battle was expected between the two wings of the Congress over the issue of Dominion Status v. Independence. Mr. Subash Bose and Jawahar Lal Nehru were the leaders of the young element, which stood for Independence. At this stage, Mahatma Gandhi intervened

and was successful in avoiding a rift in the Congress by getting passed a resolution in which an ultimatum was given to the Government to the effect that if the Nehru Report (which asked for only Dominion Status) was not accepted in its entirety on or before December 31, 1929 ; "the Congress would organize non-violent non-co-operation by advising the country to refuse taxation and in such other manner as may be decided upon." An amendment against this resolution in favour of Complete Independence was moved by Mr. Subash Chandra Bose and was seconded by Mr. Jawahar Lal Nehru but was lost by 1350 against 973 votes. The main resolution was passed, mostly because of personal deference to Mahatma Gandhi by the delegates.

It may be added that there is no material difference between Dominion Status and Independence. Dominion Status does not imply less national sovereignty than complete Independence. Even by 1927, when we first heard of a resolution in favour of national Independence, in preference to Dominion Status, conventions operating in the British Dominions had made it sufficiently clear that the Dominions were in no way, externally or internally, subordinate to England. The legal seal was placed on the absolutely independent status of the Dominions by the Westminster Act, 1931. The controversy was rather sentimental. It was also unfortunate. It made England suspicious of a free India. Beginning with the Cripps proposals, every constitutional document issued by the British Government stated that Dominion Status included the right to go out of the British Empire. This was done to satisfy those Indians who were never weary of telling England that India would go out of the British Empire, after she was free.

Heading towards the Clash : In May, 1929, the Labour Government came into office in England again with Mr. Ramsay Macdonald, as the Prime Minister and Mr. Wedgwood Benn, as the Secretary of State for India. Mr. Ramsay Macdonald was known to be sympathetic towards India's demand for self-government. Shortly before the elections he had said that it was a question of months only, when India would be another Dominion in the British Commonwealth. Naturally, therefore, high hopes were entertained by Indians that the Labour Government might recognize the justice of their demand. The new Government called Lord Irwin from India for consultations. After his return from England, Lord Irwin made a Declaration on October 31, 1929 that he was authorized, "on behalf of his Majesty's Government, to state clearly that in their judgment, it is implicit in the Declaration of 1917, that the natural issue of India's constitutional progress, as there contemplated, is Dominion Status." The Viceroy also said that after the publication of the Report of the Simon Commission, a Round Table Conference would be convened in London, consisting of the representatives of the British India, Indian States and the British Government to consider the Report as well as any other proposals for a new constitution for India. It will

be noticed that the Declaration was very vaguely worded. It was evidently made in reply to the ultimatum regarding the acceptance of the Nehru Report by December 31, 1929. But no mention was made in the Declaration regarding the willingness of the British Government to grant immediate Dominion Status to India. Yet India hoped against hope, and tried to read more in it than it evidently meant.

Reactions to the Declaration: Immediately after the announcement of the Declaration, a Conference was called at Delhi of the members of the Congress Working Committee and other most important leaders in the public life of India; and a manifesto was issued in reply over the signatures of Mahatma Gandhi, Pt. Nehru, Sir Tej Bahadur Sapru, Pt. Madan Mohan Malviya, Dr. Ansari, Dr. Moonjee, Rt. Honourable V. S. S. Shastri, Mrs. Besant and many others. The manifesto appreciated the sincerity underlying the Declaration and assured His Majesty's Government full co-operation, in evolving a scheme of Dominion constitution. The signatories to the manifesto believed that the Round Table Conference proposed was meeting not to discuss when Dominion Status was to be established but to frame a scheme of Dominion constitution for India. The manifesto stated that it was absolutely essential that public should be made to feel that a new era had commenced. It was considered vital for the success of the proposed Conference that there should be a general amnesty and that the Indian National Congress should have predominant representation on the Conference.

It will be seen that the Indian leaders went to the farthest end to arrive at an amicable settlement. The response was generous indeed. There was, however, some young blood in the Congress, which was simply disgusted with the attitude adopted in the manifesto. Mr. Jawahar Lal Nehru and Mr. Subash Bose resigned from the Congress Working Committee, as a protest against the adoption of the manifesto. They still stood for *Purna Swaraj* or Complete Independence. The hands of these Extremists within the ranks of the Congress were strengthened by the callous attitude of the Conservative diehards of England. Within a fortnight of the Declaration, Mr. Churchill, who had always been an arch enemy of India's freedom, described Dominion Status for India 'as a crime'. The Liberals were also not sympathetic towards the Nehru Report, because it meant the shelving of the Simon Commission Report, with which their leader Sir Simon was vitally associated. As the Labour Government was not having an absolute majority of their own in the House of Commons, they were quite weak in carrying out their original intentions in practice. Consequently, the Labour Government tried to riggle out from "Dominion Status here-and-now idea." The Labour Government, evidently, did not like to stake its very life for the sake of India. The Indian leaders were not clear as to what were the actual intentions of the British Government regarding the immediate grant of Dominion

Status to India. Mahatma Gandhi wanted to know the mind of the Government clearly on this issue.

An interview was arranged between the Viceroy and Mahatma Gandhi on December 23, 1929, at which some other prominent Indian leaders like Pt. Moti Lal Nehru, Sir Tej Bahadur Sapru and Mr. Jinnah were also present. The Viceroy was, unfortunately not in a position to give any definite assurance that a constitution conferring full Dominion Status on India would be framed at the Round Table Conference. Thus, the Government was not willing to concede Dominion Status, as asked for in the Nehru Report. The Leaders thus returned empty-handed from the Viceroy. The period of ultimatum was almost over. The atmosphere at the Lahore Session of the Congress in December, 1929, was very tense because of this. It was in the fitness of things that Mr. Jawahar Lal Nehru, a doyen of the Indian youth, should have been the President of the Lahore session of the Congress.

Resolution of Complete Independence : Even Mahatma Gandhi could have no excuse now to avoid a resolution demanding Complete Independence. It was also clear in the minds of the delegates assembled at Lahore that unless they were prepared to make further sacrifices for the cause of Independence and to fight for it, there was no chance of getting justice at the hands of the British Government. Consequently the famous Independence Resolution was adopted at mid-night on December 31, 1929, in a tense atmosphere. The resolution states, *inter alia*, that this Congress, "is of the opinion that nothing is to be gained in the existing circumstances by the Congress being represented at the proposed Round Table Conference. This Congress, therefore, declares that the word 'Swaraj' in article 1 of the Congress Constitution shall mean Complete Independence, and further declares the entire scheme of the Nehru Committee's Report to have lapsed. The Congress calls upon Congressmen and others taking part in the national movement to abstain from participating directly or indirectly in future elections and directs the present Congress members of the Legislatures and Committees to resign their seats. This Congress authorises the All-India Congress Committee, whenever it deems fit, to launch upon a programme of Civil Disobedience including non-payment of taxes, whether in selected areas or otherwise and under such safeguards, as it may consider necessary."

Day of Independence : It was also decided to observe January 26, as the Day of Independence, every year. A pledge was drawn up, which was to be read and solemnly taken, while celebrating the Day. The pledge declared, "It is the inalienable right of the Indian people to have freedom and to enjoy the fruits of their toil, and have the necessities of life, so that they may have full opportunities of growth. We believe also that if any Government deprives the people of their rights and oppresses them, the

people have a further right to alter it or to abolish it. The British Government in India has not only deprived the Indian people of their freedom, but has based itself on the exploitation of the masses and has ruined India economically, politically, culturally and spiritually. We hold it to be a crime against man and God to submit any longer to a rule that has caused this four-fold disaster to our country. We will, therefore, prepare ourselves for Civil Disobedience and solemnly resolve to carry out the Congress instructions issued from time to time for the purpose of establishing *Purna Swaraj*."

Since that time January 26, had been observed as a day of Independence everywhere every year ; and the above pledge had been solemnly repeated by millions of people till 1947—the year of Independence. The present Constitution was inaugurated on that day to commemorate the importance of the Day in our national movement. No doubt, January 26 will continue to be remembered as a red letter day by the present as well as the future generations of Indians.

CHAPTER XVIII

CIVIL DISOBEDIENCE MOVEMENT AND ROUND TABLE CONFERENCES

Apart from the unwillingness of the British Government even to accept the Nehru Report, various other factors also contributed in making Civil Disobedience inevitable. Acute economic depression had started in India, in sympathy with the world depression, which had made the conditions of labour, peasantry and businessmen deplorable. Communist workers and Peasants Associations were springing up everywhere. In the middle of 1928, under the leadership of Sardar Vallabhai J. Patel, the peasants of Bardoli in Surat District of Gujrat had carried out a successful *satyagraha* by refusing payment of land revenue, which suggested one effective way of compelling the Government to redress popular grievances. The Government was especially keen to suppress the Communists. So it decided to round up almost all the Communist leaders and in March, 1929, lodged them at Meerut, where they were kept as under-trial prisoners for four years, which became a great judicial scandal. At the end, 27 prisoners were sentenced to varying terms of imprisonment, ranging from transportation for life to rigorous imprisonment for three years. In November, 1929, the All-India Trade Union Congress met, under the Presidentship of Mr. Jawahar Lal Nehru, when a resolution was passed for Indian Independence and to establish in India a Socialist Republic. Unrest is usually the parent of a revolution. Mahatma Gandhi came to the conclusion that a revolution was inevitable in India. "The only thing that the Mahatma felt he could do was, to prevent it from becoming a butchery, by placing himself at the head of the revolution and making it a non-violent one of *satyagraha*."¹

Before starting *satyagraha*, Mahatma Gandhi made last minute efforts to avert it. He approached the Viceroy with his eleven demands, which were not conceded. On February 11, the Congress Working Committee authorized Mahatma Gandhi to start Civil Disobedience. On March 2, Mahatma Gandhi addressed his famous letter to the Viceroy through an English friend of his, Reginald Reynolds, intimating his resolve and beseeching him to avert the catastrophe, if possible. But nothing came out of it.

The Dandi March : The stage was thus set for the second major struggle of sufferings for the Indian patriots. On March 12, after previous notice to the Viceroy, Mahatma Gandhi started his

1. Zacharias : *Renascent India*, p. 261.

famous March to Dandi, along with 79 selected followers to break the Salt Laws. Salt is the commonest and cheapest article of food. It is the greatest friend of the poorest. Salt tax, which was doubled in 1923, fell most heavily on the poor. It was a legal offence to prepare it, even from the sea water. Hence Mahatma Gandhi decided that the Salt Law should be broken first. It was a long journey of 200 miles, which was covered on foot by the marchers in 24 days. Throughout the March, at every step and stage, villagers flocked to greet the Mahatma and his followers, with flowers, cheers and the national slogans. Often the column, had to wade through enthusiastic crowds on both sides. Throughout the length and breadth of the country, the Press gave full publicity to the scenes of the March, as it progressed. By the time this marching column of pilgrims reached the destination, the whole of India found itself pushed forward by an ever-swelling wave of patriotism. The masses were, thus, prepared for the impending struggle. Satyagrahis reached Dandi on April 5, and after a day of fasting and prayers, picked salt from the beach and thus broke the Salt Law. This is how the non-violent Civil Disobedience movement was started by a deliberate, though a technical, breach of the Law.

Repression by the Government : This act of Mahatma Gandhi and his followers was a signal for the breaking of Salt Laws all over the country. In Bombay, Bengal, U. P., C. P., and Madras illegal salt-making was started. Picketing and boycott of liquor shops soon followed—a work which Mahatma Gandhi entrusted to the women of India. The boycott was successful beyond all calculations. In Delhi alone, about 1600 women were imprisoned, and most of the regular shops closed down. The glorious part which the women of India took in the movement is one of its highlights : it brought women out of *pardah* and served as the first step towards their present emancipation and progress. Boycott of foreign cloth also started, which proved a blessing in disguise for the cloth millowners, who were groaning under the economic depression. Import of foreign cloth went down to about one-fourth. The Indian mills introduced double-shifts to cope up with the increased demand.

The Government, as usual, resorted to merciless repression. Although sporadic acts of violence were committed by the public here and there, on the whole the campaign was conducted in a non-violent and peaceful manner. On April 23, the Government indulged in a dreadful butchery at Peshawar. Indiscriminate firing was ordered. Hundreds were killed and wounded. For a time, the Government stopped firing by soldiers on the crowds, and indulged in *lathi* blows by the police. The technique of the *lathi* charge was perfected by teaching the police to strike at vital parts. But the people were not cowed. All dread of the physical force of the Government was gone. On April 16, Mr. Jawahar Lal Nehru was arrested and it was followed by the arrests of some

other important leaders. Mahatma Gandhi's arrest, which was unexpectedly delayed, followed on May 5, 1930. He was sent to Yarvada Jail to be kept under detention during the Governor's pleasure, because in the opinion of the authorities, he was a menace to public order. Evidently, the Government was afraid of prosecuting Mahatma Gandhi, even for the clearly illegal acts committed by him. The arrest of Mahatma Gandhi added fuel to the fire and the movement was intensified. The Government increased the speed of arrests, which abated only when almost all the existing jails were filled to capacity with the *satyagrahis* and the Government had to construct new jails and requisition new buildings to accommodate the prisoners. In all, more than 60,000 people courted imprisonment for taking part in the struggle. The Government also resorted to emergency ordinances. More than a dozen such ordinances were issued by the Governor-General to bring the movement under control. The All-India Congress Committee and the local Congress Committees were declared unlawful. After Mahatma Gandhi's arrest, the payment of taxes began to be refused. The bulk of the Mussalmans of India did not take part in the campaign. Mr. Jinnah declared that the movement was an attempt to place the Mussalmans of India at the mercy of the Hindu Maha Sabhites. The Red Shirts, under the leadership of Khan Abdul Ghafar Khan, took a leading part in the movement.

In August, 1930, Sir Tej Bahadur Sapru and Mr. Jayakar attempted peace-making between the Congress and the Government, which is sometimes described as "Sapru-Jayakar Peace Parleys." The Liberal leaders carried on a long chain of interviews with the Viceroy on the one hand and Mahatma Gandhi and the Congress leaders on the other; but they were not successful in bridging the gulf between the Government and the Congress. The struggle continued for about 6 months more. The First Round Table Conference started its deliberations on November 12, 1930 which was boycotted by the Congress. On January 25, 1931, all top-ranking leaders of the Congress were released. Pt. Moti Lal Nehru died on February 6, 1931 as the result of long imprisonment during the movement, which was a great loss to the country at such a critical juncture. The movement was called off on March 5, 1931, after the signing of the Gandhi-Irwin Pact, to which we shall presently refer.

First Round Table Conference : The Report of the Simon Commission was published on May 27, 1930. It was rejected by all political Parties in India. The British Government had no option but to convene a Round Table Conference and thereby admit the right of Indians to participate in constitution-making.

The Round Table Conference was inaugurated on November 12, 1930 by the King and was presided over by Mr. Ramsay Macdonald. It was started at a time, when the Civil Disobedience

Movement was at its height in India and the ugliest form of repression was being perpetuated by the British bureaucracy in India. The Conference had 89 delegates from India, out of which 57 represented British India and 16 were the representatives of the Indian States. There were 16 members of the British Parliament from all the three Parties. The representatives from British India were nominated by the Viceroy and the 16 Princes were also selected by him. The delegates from British India represented the Hindus, Muslims, Christians, Sikhs, Landlords, Commercial Interests, Scheduled Castes, Trade Unions, etc. There was no representative of the Congress.

In the opening session of the Conference, the Prime Minister Ramsay Macdonald suggested some constitutional proposals, on the basis of which discussion was to proceed in the Conference. Firstly, a federal form of government was proposed for India. Secondly, Provinces were to be given full responsible governments, with necessary safeguards. Thirdly, partial responsibility was to be introduced in the Central Government, subject again to certain reservations. On the issue of federation, there was no difference of opinion. All the delegates were in favour of it. Even the Indian Princes came out with a statement that they would welcome the formation of an All-India Federation and would be glad to join it. The attitude of the Princes was an agreeable surprise for the delegates from the British India, because so far the Princes had been objecting to the idea of the States joining the federation along with the British India, which course was bound to decrease their personal powers and help the growth of progressive movements in the States. It was really the British whip which made the Princes declare themselves in favour of the federation. The British Government knew that the Indian leaders would not be satisfied without some sort of responsibility at the Centre. They persuaded the Princes to join the federation to counteract the activities of the progressive leaders from the British India. There could be no objection to the granting of full responsible governments in the Provinces from Indian side. There was, of course, some scope for differences regarding the nature of safeguards, which were sought to be introduced to check the powers of the responsible Ministers in the Provinces. The idea of responsibility at the Centre was also welcomed.

There was, however, no agreement between the Indian delegate, over the communal question. The Muslims, as a body, stood for separate electorates. Mr. M. A. Jinnah continued to press for his Fourteen Points, which were presented as the minimum demand of the Muslims. Dr. Ambedkar, on behalf of the Scheduled Castes, also insisted on separate electorates. The delegates of the Hindus were clearly in favour of joint electorates but were prepared to concede reservation of seats for the Minorities. Thus the delegates from the British India presented an interesting spectacle. Representatives

of every community vied with one another in pressing for advantages to their own community. Nothing better could be expected from the type of motley crowd that was assembled in London, and the way, the delegates were picked up.

The Conference concluded in July, 1931. In winding up the discussion of the Conference, the Prime Minister summed up the conclusions which were arrived at and on which there was a general measure of agreement between the delegates. The points agreed upon were the same he had hinted at in the opening session : namely, an All-India Federation, full responsible government in the Provinces with necessary safeguards and dyarchy at the Centre with reservations. The Prime Minister, once again, expressed the hope that the Congress would be willing to join future deliberations of the Conference and invited it to co-operate with the task of constitution-making. There was no escape from it. The Indian delegates were not in a position to speak for the whole of India in the absence of the Congress leaders. They were simply not in a position to assure the British Government that their commitments at the Conference would be acceptable or backed by the Indian masses. In the absence of the representatives of the Congress, there was a fear that the conclusions reached at the Conference might not be accepted by the Indian masses. The Conference was adjourned to some future date.

Gandhi-Irwin Pact : We have noted above that, for evident reasons, the British Government was keen to arrive at a settlement with the Congress. In pursuance of the policy, the ban on the Congress Working Committee was lifted and its members, along with many other important leaders including Mahatma Gandhi, were released unconditionally on January 26, 1931. Long and protracted negotiations started between Lord Irwin and Mahatma Gandhi on February 17, which resulted in the ill-fated Gandhi-Irwin Pact, which was signed on March 5, 1931. Sir Tej Bahadur Sapru, Mr. Jayakar and the Rt. Honourable V. S. S. Sastri acted as intermediaries. The pact, which was ratified on March 31, 1931 by the Karachi Congress, showed a spirit of give and take. On behalf of the Government it was agreed : (i) to withdraw all ordinances and pending prosecutions ; (ii) to set all political prisoners free, except those who were guilty of violence ; (iii) to restore all property confiscated for taking part in the *satyagraha* ; (iv) to permit peaceful picketing of liquor, opium and foreign cloth shops, and (v) to permit the collection or manufacture of salt, free of duty, to persons residing within a specific distance of the seashore. On behalf of the Congress, on the other hand, it was agreed : (i) that Mahatma Gandhi will not press for the investigation of the police excesses ; (ii) to suspend the Civil Disobedience Movement ; (iii) to participate in the Second Round Table Conference on the basis of "responsibility and safeguards in the interests of India" ; and (iv) to stop all boycott.

On behalf of Congress
Boycott.

Most of the Indians felt happy and relieved over the Pact. But the left wing of the Congress was not satisfied with it. Mr. Subash Chandra Bose denounced it. Mr. Jawahar Lal Nehru was shocked to read the reservations or safeguards agreed upon because they meant clearly that our control over Indian affairs would not be full. The youth of the country were particularly disgusted with it because Mahatma Gandhi was not able to secure pardon or at least get the death sentences of Sardar Bhagat Singh and his comrades commuted to transportation for life. The Pact was also not liked by the Conservative circles of England and the British bureaucracy in India.

The next session of the Congress was held in March, 1931 at Karachi, where the Pact was to come for ratification before the Congress. Sardar Bhagat Singh and his comrades were hanged on the eve of the Karachi session, which marred all rejoicing in connection with it. Rather, the young men were woefully angry with Mahatma Gandhi. On his way to Karachi, the youth shouted "Down with Gandhi"; "Gandhi truce has sent Bhagat Singh to the gallows". It was in this background, that Mahatma Gandhi had to face the Karachi Congress. But he saved the situation by making a great speech at the occasion; and adding pathetically that there was a limit beyond which sufferings of the people in such a struggle could not go. He appealed to the delegates to ratify the Pact, which had, for the time being, put a stop to their sufferings and was, at least, a respite. The Pact was eventually ratified, paving the way for the participation of the Congress in the Second Round Table Conference. A curtain was drawn over the Movement of 1930-31. The Congress, no doubt, came out of it with added strength, prestige and confidence.

Lord Willingdon who assumed charge as the Viceroy towards the end of April 1931, was a blood and iron man and was hardly the person to appreciate the spirit of the Gandhi-Irwin Pact. The terms of the Pact began to be violated by the bureaucracy, and the Congress, once again, began to show signs of restlessness and resentment.

THE SECOND ROUND TABLE CONFERENCE

The Second Round Table Conference opened on September 7, 1931. Between the Gandhi-Irwin Pact and the Second Round Table Conference significant changes had taken place. Lord Willingdon had succeeded Lord Irwin. In England the Labour Government was replaced by the National Government, although Mr. Macdonald continued to be its head. The Labour party expelled Mr. Macdonald for forming the National Government and assumed the role of the Opposition. Mr. Macdonald, thus, for all intents and purposes, became the head of the Conservative or Tory Government. Mr. Wedgwood Benn, the Secretary of State for India, was replaced by Sir Samuel Hoare—again a Conservative! As a result of

general elections which followed, a purely Conservative Government was formed in England in November; 1931, while the Second Round Table Conference was still in session. Thus, when the Second Round Table Conference met, all the good-will on the side of the British statesmen had disappeared. They again decided to hold India tightly as ever, to regain the few rights surrendered by the Government in the Gandhi-Irwin Pact and relied, once again, on their too familiar and handy weapon of divide and rule.

This was the background in which the Second Round Table Conference met and carried on its deliberations. Gandhiji attended as the sole representative of the Congress. Pt. Madan Mohan Malviya and Mrs. Sarojini Naidu were nominated by the Government in their individual capacity. A few more delegates were added. The Conservative Government and Sir Samuel Hoare, as the Secretary of State for India, were the new factors to be reckoned with, to which we have already referred. Mr. Macdonald remained the chairman of the Round Table Conference.

The main work of the Second Conference was done by two Sub-Committees on 'Federal Structure' and 'Minorities', which re-examined and amplified the reports presented by the corresponding Sub-Committees of the first session. In the first session, Dyarchy during the transitional period or responsibility with safeguards concerning Defence, etc., at the Centre were agreed upon. When these questions came up for discussion, Mahatma Gandhi, naturally, insisted on full responsibility at the Centre as well as in the Provinces. In the Gandhi-Irwin Pact, responsibility had been agreed upon and safeguards were to be in the interests of India. He was stunned to find that all the suggested safeguards were impediments or obstacles to responsibility and were against the interests of India.

✓ In the Minorities Committee, Mahatma Gandhi had horrible experiences and time. Almost all the communal delegates, barring a few, stood for loaves and fishes; a few more seats here and there for their respective communities. None of them was prepared to budge an inch from his viewpoint; none was keen on a compromise; none stood for the national interests! Very soon Mahatma Gandhi expressed his inability to arrive at an agreement with these communalists.

(In his opening speech at the Conference, Mahatma Gandhi delivered an inspired oration, in which he sought to convince his audience about the national character of the Congress and about the justice of the India's demand to be a mistress in her own house. While moving a vote [of thanks to the chair at the end of the Conference, Mahatma Gandhi frankly said that he and the Prime Minister had probably "come to the parting of ways".¹

1. Prof. Coupland : *The Indian problem, Part I*, p, 127.

Revival of Civil Disobedience (1932-1934): When Gandhi returned to India on December 28, 1931, the Gandhi-Irwin Pact seemed to have already ended. Neither Lord Wellington nor the British bureaucracy under him wanted to implement the Pact. When Gandhi arrived, Bengal N. W. F. Province and U. P. were already under the rule of Ordinances. In Bengal, the people were almost subjected to a state of martial law. In North West Frontier Province, Khan Abdul Ghafar Khan and his brother had been arrested. Jawahar Lal Nehru was placed under detention in connection with the agrarian trouble over the zamindari lands. Mahatma Gandhi sought an interview with Lord Wellington, which was curtly refused. The Working Committee of the Congress felt compelled to authorize the renewal of the struggle.

The reaction of the Government was swift and sudden. Mahatma Gandhi and the members of the Congress Working Committee were immediately arrested. This was followed by country-wide arrests of all important Congressmen and the smallest of its office-bearers. The Congress was declared unlawful. Its offices were raided, official papers seized and funds frozen! A series of ordinances were promulgated, giving extraordinary powers to the Executive, under which people were liable to be arrested on mere suspicion. Even the sympathisers and helpers of the Congressmen were looked upon with suspicion and sometimes punished. The press was, virtually, gagged. Lathi charges, physical beatings, shootings, confiscations of property and collective fines were freely resorted to by the Government. A veritable reign of terror was thus let loose. For more than 6 months the movement went on with all its intensity. More than 120,000 persons courted imprisonment.

After the Communal Award and the Poona Pact a detailed reference to which will follow, Mahatma Gandhi commenced his twenty one days' fast on May 8, 1933 to atone for the sins of the Hindus against Untouchables and to impress upon the workers engaged in the Harijan work to put their entire heart into the work for removing untouchability. On the very day of the commencement of the fast, Mahatma Gandhi was released unconditionally. After the successful termination of the fast, Mahatma Gandhi's mind was occupied with the problem of the Harijans and the sufferings of the people as a result of the Civil Disobedience Movement. In June, 1933, he, therefore, advised the suspension of the mass Civil Disobedience, but advised the continuation of Individual Satyagraha. But Lord Wellington was not the person to relent. Repression by the Government continued and political prisoners were not released as was expected by Mahatma Gandhi. Individual *satyagraha* continued for about eight months more. Gandhiji was, again, arrested in 1933 and was sentenced to one year's imprisonment. He was again released after he had started a fast in the prison. In April, 1934, the entire movement was suspended.

Council Entry Again : As is natural, the Civil Disobedience Movement having failed, the Congressmen, once again, thought of Council-Entry, as in 1922. The All-India Congress Committee met in May, 1934 after three years and permitted Congressmen to contest elections and enter the Legislatures. This time, the Congress accepted the Council-Entry Programme without reserve. A Parliamentary Board was set up to select candidates and to fight the elections. In view of this changed attitude of the Congress, the Government lifted the ban from it. In November, 1934, elections were held. The Congress swept the polls in all Provinces except the Punjab, proving once again, its popularity amongst the masses.

Appraisal of the Movement : The youthful element in the Congress was, once again, angry over the suspension of the Movement. Mr. Subash Chandra Bose expressed his resentment from abroad. Mr. Jawahar Lal Nehru was frankly disillusioned by the decision of Mahatma Gandhi who, probably, thought fit to end the struggle because of untold sufferings of the people and a veritable reign of repression which was perpetuated by the Government. Because of this repression, demoralization had been noticed at places, violence was indulged in and the movement was going underground. The communal organizations were also making mischief and exploiting the Movement for their own advantage. To Mahatma Gandhi's mind, there was no other way to end the miseries and untold sufferings of the people. There are some marked features, which distinguish this Civil Disobedience Movement from the previous ones. This time, the Government acted with a great swiftness, and was determined to crush the Movement, from its very infancy. The repression was much more brutal and severe than before. Nothing better was expected from the Hoare-Wellington axis. Both stood for rank imperialism and the policy of 'blood and iron'. The Movement, apparently, failed because it stopped without achieving its object. Really, it was suppressed by the brute force, which knew no mercy or compassion. But the spirit of revolt which had taken firm roots in the hearts of the people was not and could not be crushed. The fire of patriotism remained smouldering in the hearts of the people. National Movements have rarely been permanently crushed by repression. They are only silenced and suppressed at times, only to rise again with manifold vigour later.

THE COMMUNAL AWARD

At the close of the Second Round Table Conference, Mr. Ramsay Macdonald said that in the absence of an agreement between the various communities on the communal problem, the British Government would be compelled to give its own solution of the problem. As no agreement was forthcoming, Mr. Macdonald gave, what is famously known as, the Communal Award on August 16, 1932. The British Government also declared that they would be ready and willing to substitute for the Award any other scheme

that was agreed upon by the Parties, before the proposed Bill regarding the new constitution of India became a law. It may be added here that it was wrong to call it an Award. An Award implies a judgment of an arbitrator between parties, who have willingly agreed to an arbitration. In the present case, the Parties affected, at least the Congress, never asked for it. It was nothing more than a decision of the British Government imposed upon the Parties.

Provisions of the Award : The scope of the Award was a limited one, in the sense that it was confined to the seats to be allotted to the various communities in the Provincial Legislatures. The Award did not refer to seats in the Central Legislature, which was to include the seats to be allotted to the Indian States. Separate electorates were introduced for Muslims, Sikhs, Indian Christians, Anglo-Indians and women. Labour, Commerce, Industry, Landlords and Universities were given separate constituencies and fixed seats. Seven seats were reserved for Marahattas in Bombay, out of the general seats. All qualified voters, who were not voters either as a Moham-medan, Sikh, Indian Christian, Anglo-Indian or European, were entitled to vote in the general constituencies. It was declared that a provision would be made in the constitution for the revision of this electoral arrangement after ten years with the consent of the communities affected.

Members of the Depressed Classes qualified to vote were given the right to vote in the general constituencies. Apart from this, a specific number of seats was assigned to them, to be filled by election from special constituencies in which only members of the Depressed Classes, electorally qualified, were entitled to vote. Thus the Depressed Class voters were given two vote each—one in a general constituency and the other in the above-mentioned special constituencies. This was done in view of the backward position of the community and to give it an adequate representation. The special constituencies were intended to be formed in selected areas, where the Depressed Classes were most numerous. Except in Madras, these constitutencies were not to cover the whole area of a Province. In Bengal, because the Depressed Class voters were in a majority even in some general constituencies special constituencies were not provided for them, for the time being. Not less than 10% seats were to be given to the Depressed Classes in the Bengal Legislature. It was declared that the Special Depressed Class Constituencies would come to an end after twenty years. The net result of this arrangement regarding the Depressed Classes was that they were accorded separate electorates apart from the Caste Hindus, which was a serious innovation.

Criticism of the Award : The Communal Award gave rise to a storm of controversy in India in the Hindu and the national quarters. It was criticised on the following grounds :—In the first place, the Award was regarded as manifestly unjust and unfair

although the British Government claimed that it was impartial and equitable. The Award was unfair to the Hindus ; it conceded to Muslims almost all their demands and it was extremely generous to the Europeans. "In Bengal, the Hindus were in the minority of 44·8 per cent of the total population, but they were given only 32 per cent of the total seats. The Mussalmans who were 54·8 % of the population were given 47·6 per cent seats of the total. The Europeans who were '01 per cent of the population were given 10 per cent of the total seats. It will, thus, appear that the Muslims who were in a majority were reduced to a minority and the Hindus who were in a minority were deprived even of their due proportion in order to give a very heavy weightage to the Europeans. What is noteworthy is that although the representation of both Muslims and Hindus was reduced, the cut was greater in the case of Hindus. In the Punjab, Muslims and Hindus were similarly treated to give weightage to the Sikhs."¹ Secondly, the Communal Award gave separate representation to the Depressed Classes, which aimed at the disruption of the Hindu community, whose part and parcel they had always been. This was very much resented by the Hindus and other nationalist leaders in India. Thirdly, the Award did not follow any clear-cut principle. Minorities were said to be given weightage, but no weightage was given to the Hindus in Bengal and Punjab. The weightage given to Muslims was more than the weightage given to the Hindus in the North West Frontier Province and Sind. Fourthly, the Award was an attempt to perpetuate divisions based on castes and creeds in India. "The electorate in 1919 was broken up in 10 parts ; now it is fragmented into 70 unequal bits. Separate electorates were thrust, against their wishes, on women and Indian Christians. Division on the basis of religion, occupation and service were made. Every possible cross-division was introduced."² Fifthly, the retention and extension of the separate electorates was inimical to the growth of a single nationality, as shown by the formation of Pakistan. The Communal Award created many more divisions. Sixthly, the communal electorates had no historical basis. In no other country, separate electorates were ever accorded on the basis of caste, religion and sex. Seventhly, the separate electorates are against all democratic principles. The majority feels that they had done all they could to help the Minorities and the latter settles down into a feeling of satisfied security and stops worrying to improve its lot. And lastly, the Communal Award was regarded as a clever device to rule India by dividing it and creating more and more dissensions among Indians.

The Muslims were, evidently, satisfied with the Award. The Working Committee of the Congress took up a strange attitude. Although it considered the Award harmful to the growth of nationalism in India and regarded it unjust and unfair to certain com-

1. Dr. Rajendra Prasad : *India Divided*, p. 129.

2. Mehta and Patwardhan : *Communal Triangle*, p. 72.

munities, the Working Committee declared that "it would neither accept nor reject the Award." This decision of the Working Committee is generally regarded as unfortunate. It was vehemently criticised by men like Pandit Madan Mohan Malviya, who formed the Nationalist Party to safeguard the legitimate rights of the Hindus.

The Poona Pact : Mahatma Gandhi had already told the British Government that he would, if necessary, resist, with the very life, any attempt on the part of the British Government to introduce separate electorates for the Depressed Classes. He opposed it bitterly, because in his opinion that would disrupt the Hindus and perpetuate Untouchability. But the Government did not pay any heed to the warning and the separate electorates were introduced. At the time of the publication of the Award, Mahatma Gandhi was in jail. He again asked the Government to reconsider its decision, but with no effect. On September 20, true to his words, Mahatma commenced his fast, unto death to get the wrong righted. The British Government was hardly in a mood to listen. They would have allowed Mahatma Gandhi to die. But very soon leaders like Pandit Madan Mohan Malviya, C. Rajagopalachari, Dr. Rajendra Parsad, Dr. Ambedkar and M. C. Rajah conferred together at Poona for about six days to save the life of Mahatma Gandhi. As a result of these deliberations, the Poona Pact was agreed to between these leaders including Dr. Ambedkar, which was also accepted by the British Government.

The Poona Pact retained joint electorates for the Scheduled Castes along with the Hindus. But 148 seats were reserved for the Harijans in the Provincial Legislatures as against 71 seats given to them by the Communal Award. All the members of the Depressed Classes registered in the General Electoral Roll in a constituency were to form an electoral college, which was to elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats, by the method of single transferable vote. The four persons getting the highest number of votes in such primary election were to be candidates for election by the general electorate. This method was to be followed in the case of seats both in the Provincial and the Central Legislature. 18% of the seats allotted to the general electorate for the British India in the Central Legislature were to be reserved for the Depressed Classes. The system of primary election for a panel of candidates, as above described was to be terminated after 10 years. Thus, it will be seen that more than double the seats were given to the Harijans by the Poona Pact than the number allotted to them by the Communal Award.

The Third Round Table Conference : The whole idea of a subject people sitting at a Round Table Conference was distasteful

to the mind of Sir Samuel Hoare. Hence, it was with a great reluctance that the Third Round Table Conference was convened. It was held from November 17 to December 24, 1932. Only 46 delegates were invited. The Conservative Government took good care not to extend invitations to those, from whom there was even a chance of opposition. Only the friends of the Conservatives, i.e., Communalists and Liberals were invited. The Labour party did not co-operate with it. The participation of the Congress was out of question. It was engaged in a life and death struggle with the forces of British Imperialism and was being subjected by the Government to the severest form of repression. In the Conference, Reports of Sub-Committees appointed during the Second Round Table Conference were heard and form the basis of discussions. Some more details about the new constitution were settled. The Indian delegates sought to introduce some progressive provisions, which were all put in cold storage. The question of including a Bill of Rights for the citizen in the new constitution was raised by the Indian delegates, which was also shelved on flimsy excuses. The Conservative Government had, apparently, decided to hold India tightly and to ride rough-shod over the aspirations of Indians, including the Liberals.

The White Paper : In March, 1933, the British Government published the White Paper containing the proposals of the British Government, indicating the line on which the new Constitution of India was to take shape. It was drafted on the basis of the discussions held and conclusions arrived at during the three Round Table Conferences. The White Paper contained some points of departure from what was decided at the Conferences. But all these innovations were retrogressive and were introduced to make it more palatable to the Conservative majorities which were found in both the Houses of the British Parliament. In April, 1933, a Joint Parliamentary Select Committee was appointed to discuss in detail, the proposals of the Government contained in White Paper. It consisted of 16 members from both the Houses of the British Parliament with a clear majority of the Conservative members, with Lord Linlithgow as its Chairman. The representatives from British India and the Indian States were invited to appear before it as expert witnesses. Sir Samuel Hoare acted as the chief spokesman of the Government in his capacity as the Secretary of State for India.

The Report of the Committee was published on November 11, 1934. As was expected, the Committee made the White Paper still worse, from the Indian point of view, and introduced some more reactionary provisions. The White Paper had recommended direct election to the popular House of the Central Legislature. The Joint Select Committee discarded all democratic principles and usages and recommended indirect election for that House. The scope of the separate electorates was extended. The represen-

tatives of the States were to be nominated by the Princes. The power to abolish the second Chambers in the Provinces had been given to the Central Legislature of India by the White Paper ; the Committee kept this power back in the hands of the British Parliament. Restrictions on the powers of the Federal Court were increased, so as not to make it the final court of appeal in India on any point and to leave the supremacy of the Privy Council intact, in all cases. A bill was drafted on the basis of the Report of the Committee and became the Government of India Act, 1935, after receiving the Royal assent in August, 1935.

CHAPTER XIX

GOVERNMENT OF INDIA ACT, 1935

MAIN FEATURES AND HOME GOVERNMENT

(1) Some of the main features of the Government of India Act, 1935 were as follows :—

(i) **Supremacy of the British Parliament :** The Government of India Act, 1935 was passed without a Preamble. The Liberals, who took part in the Round Table Conferences, desired that the seal of Parliamentary approval should be affixed to Dominion Status as the ultimate goal of the British policy in India, by including it in the Preamble. The spokesmen of the British Government were not prepared to do so. They argued that Dominion Status, as the ultimate objective, was implied in the Preamble of the Government of India Act, 1919 and it was, therefore, unnecessary to do so. Nevertheless, in order to avoid the impression (that the British Government wanted to go back even on the goal fixed in 1919), it was decided that the Preamble of the Government of India Act, 1919 should not be repealed along with the Act itself. Thus constitutionally speaking, the Preamble of the Act of 1919 continued to embody the declared goal of the policy of the British Parliament towards India. According to that policy, realization of responsible government by successive stages was the goal, with the British Parliament as the sole judge of the nature and time of each advance. This objective was laid down for the first time in 1917. It is a pity that even after eighteen long years, when the new Act was passed, the British Government did not realise the necessity of any change in that policy ! The Act made no derogation in the powers of British Parliament to chalk out the political destiny of India. All rights of amending, altering or repealing the Constitution of India remained vested in the British Parliament.

(ii) **Provincial Autonomy :** Under the Government of India Act, 1919, partial responsibility was introduced in the Provinces. The Act of 1935 made a clear advance in this direction. The whole of the Provincial Executive was now made responsible to or removable by the Legislative Assembly of the Province. The difference between the reserved and the transferred subjects was dropped. All Provincial subjects were placed under the charge of popular Ministers. This, however, does not mean that the Provincial Autonomy, as actually granted by the Act, was genuine or complete. It was crippled by many limitations. There were many things,

which the Provincial Legislature could not do.) The Governors were given an imposing set of powers, which were inconsistent with the spirit of the Provincial Autonomy. (In fact, the framers of the Act intended the Provincial Autonomy to work hand in hand with the autonomy of the Governors, which was impossible as a practical proposition.)

(iii) **Dyarchy at the Centre :** The Government of India Act, 1919 did not concede any responsibility at the Centre. Under the Act of 1935, a part of the Federal Executive was made responsible to and removable by the Federal Legislature. Defence, External Affairs, Ecclesiastical Affairs and Tribal Areas were placed under the charge of Councillors, who were not made responsible to the Federal Legislature. These subjects were to be administered by the Governor-General in his discretion. (The rest of the federal subjects were placed in the charge of Ministers, who were removable by the Federal Legislature.) The control of the Ministers over the Departments placed under their charge was neither complete nor real. The Governor-General could interfere in their work in many ways, especially on the pretext of his special responsibilities. (The Federal Legislature suffered from many limitations on its powers.)

(iv) **Safeguards :** A chain of safeguards ran throughout the Act of 1935, which made even its progressive features of doubtful utility. The Governor-General and the Governors were provided with innumerable powers to throttle democratic forces at will. The responsibility transferred to Indian hands was reduced to a miserable pittance indeed by the presence of these safeguards.)

(b) **The Three Lists :** In U. S. A., the powers of the Federal Government are specified in the constitution and the remaining powers belong to the States. In Canada, the case is just the reverse. The powers of the Provinces are laid down in the Constitution and the rest of the powers are enjoyed by the Dominion Government. At the Round Table Conference, when the question of division of powers between the Federation and the Provinces arose, Muslims wanted the American model and the Liberals were in favour of the Canadian model because both the sides were under the apprehension that the side which possessed residuary powers was bound to be stronger than the other whose powers were enumerated. Ultimately the suggestion of Lord Sankey, the chairman of the Federal Structure Committee, was accepted, i.e., to enumerate the powers of both the Centre and the Units, and to do it so exhaustively as to leave little or nothing to residuary field.

Those subjects which were of common interest to the whole of India and demanded a uniform treatment were included in the **Federal List** which contained 59 items. Some of these subjects were : naval, military and air forces ; external affairs ; currency and coinage ; post, telegraphs, telephones, wireless, broadcastings, etc., federal public services ; the survey of India ; census and statistics ;

import and export; federal railways; maritime shipping and navigation; aircraft and air navigation; copy rights, inventions, trademarks; cheques, bills of exchange, promissory notes, etc.; arms and ammunition; opium; trading corporations; insurance; banking; custom duties; corporation tax; salt; taxes on income other than agricultural income; taxes on capital; succession duties; taxes on railway fares and freights; weights and measures.

Subjects which were mostly of Provincial interest and about which uniformity of treatment throughout India was not essential were placed in the *Provincial List*, which included 54 items, out of which the important were: public order, justice and courts; police; prisons; public debt, of the province; provincial public services; public works; land acquisition; local government; public health and sanitation; education; communications; water supply, irrigation and canals; agriculture; land tenures; agricultural loans; forests, mines and fisheries; trade and commerce within the province industries in the province; unemployment and poor relief, co-operative societies; land revenue; taxes on agricultural income; taxes on professions and trades and stamp duties.

A third list was also drawn, which contained items, which though primarily of Provincial interest, yet could require a uniform treatment or policy throughout India. This was called the *Concurrent List*. It contained 36 subjects, some of which were criminal law and criminal procedure; civil procedure; evidence and oaths; marriage and divorce; adoption; wills, intestacy and succession; registration of deeds and documents, trusts; contracts; arbitration; bankruptcy; newspapers; books and printing presses; prevention of cruelty to animals; jurisdiction and powers of courts in these matters; factories and labour welfare; old age pensions; unemployment insurance; trade unions; industrial and labour disputes; animals and plants and electricity.

In spite of all this exhaustive enumeration, a possibility remained of new powers coming to notice at some later date, which would require allocation. Such residuary powers are left either with the Centre or with the States in other federations. But as there was no agreement between the two sides on this point the best course would have been to leave it to the Federal Court to decide such cases. But the Act did some thing novel. The Governor General, acting in his discretion, was empowered to allocate to the Centre or to the Provinces, as he might think fit, the right to legislate on any matter, not enumerated in any of the three Lists.

(vi) Federation Proposed : (The Act of 1935 proposed a Federal form of Government for the whole of India, consisting of the British India and the Indian States. It was for the first time that an attempt was made to bring Indian States along with British India under a common Federal Government.)

(2) NATURE OF THE FEDERATION

The Indian Federation, as embodied in the Act of 1935, contained all the salient features of a Federation. It had a written Constitution. (There was a division of powers between the Centre and the Units.) A Federal Court was provided to decide disputes arising out of the interpretation of the Act of 1935. The process of amendment of the Constitution was rigid. (But the following *special features* of the Indian Federation distinguished it from other federations of the world.

Firstly, federalising is normally a process of uniting independent states.) In India federation was being introduced by splitting up the unitary structure of the British India into a number of autonomous units.) Secondly, (all federations had been formed on a voluntary basis, as a result of mutual agreement between the federating units. In India, the federation was an imposition of the British Government. Thirdly, (in all other federations the character of the units is similar.) But in India, the federation was going to be a combination of responsibly administered Provinces and autocratic States. President Lowell described the German Federal Constitution of 1871 as consisting of, "a lion, half a dozen foxes and a score of mice". The Indian Federation of 1935 was once depicted as "about a dozen domesticated bulls and several hundred wild wolves, hyenas and jackals". Fourthly, the federal government enjoys the same set of powers over every unit in all other federations.) But in India, the range of federal powers could be different not only in Provinces as against the States, it could even differ from State to State which made the federation a very complicated affair. Sixthly, in all other federations, units are given equal representation in the upper House, but in India the Units were unequally represented in the Council of State. (Seventhly, lower Houses of the federation everywhere else are directly elected.) In India, the House of Assembly was to be indirectly elected. Eighthly, (the amending authority in most other federations resides in the federations themselves.) In India, it belonged to the British Parliament. And finally, in other federations there is no outside authority to interfere in their day to day working.) But the federation of 1935 was open to interference from the Governor-General and the Secretary of State for India, who were responsible to the British Parliament.

Defects of the Federation : (The special features of the proposed federation were some of its serious drawbacks. Firstly, it had no popular support in India. The real representatives of people had little hand in its making. Secondly, as the federation was an attempt to yoke the democratic Provinces and the autocratic States, it was doubtful if such a hybrid combination could ever work with harmony and co-operation. Thirdly, as the range of the federal power differed from unit to unit it was feared that the federation would be difficult to work in practice. Fourthly,

the States were shown undue favouritism in giving them representation in the Federal Legislature. Whereas their population was roughly about one-fourth of the population of British India, the States were given 104 seats out of 250 in the Council of State and 125 seats out of 375 in the House of Assembly. (Fifthly, the representatives of the States were to be nominated by the Rulers of the States.) This was a grave defect because democratic elements in India feared that Princes would nominate a reactionary bloc, which would stand in the way of the progressive Parties in the Federal Legislature. (Sixthly, the Council of State was oligarchical in nature and gave representation to vested interests and moneyed classes.) It was given more powers than are usually possessed by upper Houses, e.g., that of voting grants. The Ministers were made responsible also to the Council. It was feared that the Council of State was so constituted as to act as a dead-weight against the wishes of the popular House. (Seventhly, the indirect election of the popular House, i.e., the House of Assembly was a grave defect.) This retrograde provision was introduced to retard the pace of political consciousness in India by disconnecting the popular House from the voters. (Eighthly, an endless chain of safeguards was provided, which could throttle democratic forces in India. The Legislature was under severe handicaps. The Governor-General and the Secretary of State were given many powers of interfering in its working. The Governor-General was endowed with such an imposing set of powers, ordinary as well as extraordinary, of making Ordinances and Governor-General's Acts and of declaring the breakdown of the Constitution, that little meaning was left in the responsibility and powers given to the Ministers. Tenthly, a dyarchical form of Government was to be introduced in the Federation. Vital subjects like Defence and Foreign Affairs were absolutely beyond the control of the Ministers. India had a bitter taste of working such a form of government from 1921 to 1937 in the Provinces. Its proposed introduction at the Centre was bound to be resented. (Finally, Indians had no power to amend the Federation) even in case of a dire necessity. The progressive Parties feared that, after having accepted the Federation, it would be difficult to get out of it. No doubt, the objectionable provisions of the Federation (like the Dyarchical Centre, were said to be transitory.) But India feared that this transitory stage might last too long. In the absence of an amending power, it was thought that even the gravest fault might continue for years.

Rejection of the Federation : The Federation was drowned in a chorus of condemnation in India. Its defects were too serious to be swallowed. The Congress, the Muslim League, the Hindu Maha Sabha and the Sikhs all declared the Federation unacceptable. The Liberals, though alive to the serious defects of the Federation, were in favour of working it. But they hardly counted with the public. Mr. Nehru called the Act of 1935 "a new charter of slavery" "all brakes and no engine." In the Act, an attempt

was made to bolster the claims of the Princes, Minorities and British vested interests and to pitch them against radical forces in India. While criticising the federal scheme of 1935, J. L. Nehru writes in his *Discovery of India*, "The Federal Structure was so envisaged as to make any real advance impossible.....reactionary as the structure was, there were not even any seeds of self-growth, short of some kind of revolutionary reaction.....the Act strengthened the alliance between the British Government and Princes, landlords and other reactionary elements in India.....it retained in British hands complete control over Indian Finance, Military and Foreign Affairs ; it made the Viceroy more powerful than he had been."¹

When the Provincial part of the Act of 1935 was introduced on April 1, 1937, even the Indian Princes had not made up their mind to join the Federation. When the British Government saw British India positively hostile towards the proposed Federation, and the Princes lukewarm, they postponed the introduction of the Federation. The Second Great War sounded the death-knell of the Federation and sealed its fate finally. The War gave rise to demands and aspirations on the part of Indians, which were far too progressive to be fulfilled within the frame-work of the Federal Structure. In his speech of September 11, 1939, the Governor-General declared the "suspension" of the Federal Scheme, which rendered it a dead letter for all intents and purposes.

NATURE OF THE SAFEGUARDS ✓

↳ In popular sense safeguards mean protective devices against a certain danger. Constitutionally speaking, they mean restrictions and limitations which would check tendencies, which the framers of a constitution want to avoid. In some constitutions, e. g., that of U. S. A., such safe guards exist to check revolutionary tendencies. In the Government of India Act, 1935, many safeguards were introduced by the British Parliament.)

Origin and History of Safeguards : The origin of the safeguards can be traced to negotiations between the Congress and the Government in 1930. In the Gandhi-Irwin Pact, it was agreed that the safeguards would be in the interests of India only. At the end of the Second Round Table Conference, when the Labour Government resigned and the so-called National Government was formed, safeguards were proclaimed to be necessary "in the common interests of India and United Kingdom." From the actual safeguards introduced in the Act of 1935, it appeared that the British Government had only the British interests to protect.

Examples of Safeguards : The safeguards provided by the Act of 1935 were far too many to be healthy for a smooth working of the Constitution. Firstly, in the Federation, Defence, External

1. Jawahar Lal Nehru : *Discovery of India*, p. 10.

Affairs, Ecclesiastical Affairs and Tribal Areas were to be in the charge of irresponsible Councillors. The Governor-General was to administer these Departments in his discretion and was free to consult the popular Ministers or not in the running of these Departments. Secondly, there was the long list of special responsibilities of the Governor-General and of the Governors, by virtue of which they could interfere in the work of the popular Ministers in every important aspect of the administration. Because of this, the Governor-General and the Governors could take any action to safeguard the interests of Minorities, Services, Princes, British economic interests, etc. While exercising a power in discretion or in individual judgment, a Governor was bound by the directions of the Governor-General and the Secretary of State, and while so doing, the Governor-General was bound by the orders of the Secretary of State. The control over Indian affairs thus extended to authorities outside India through these safeguards. Thirdly, the legislative, executive and financial powers of the Governor-General and the Governors were so many that they could easily interfere in the work of their respective Legislatures. Fourthly, the financial stability of the Federation was one of the special responsibilities of the Governor-General and he was to appoint the Financial Adviser as well as the Director and the Deputy Director of the Reserve Bank, who were to be responsible to him. Fifthly, the Governor, with the approval of the Governor-General, could at any time declare a breakdown of the Constitution in a Province and take the entire administration in his own hand. Sixthly, there were some miscellaneous safeguards, e.g., (a) Second Chambers in some Provinces; (b) indirect election to the Federal Assembly; (c) extension of communal and special electorates to new groups; (d) giving of disproportionately more seats to Indian States in the Federal Legislature; (e) nomination of the representatives of the States; (f) keeping of the higher Services and the Police beyond the control of the Ministers; and (g) keeping of the amendment of the Constitution in the hand of the Parliament.

Criticism of the Safeguards: Most of the safeguards, enumerated above were nothing but devices to retard the pace of progressive forces and nationalism in India. They showed an utter distrust of the Indian popular leaders. Demands of the Indian States, the Minorities and the Services were bolstered up to win them for British Imperialism against the forces of progress. According to Prof. A.B. Keith, in the Act of 1935, while an attempt was made to convince Indians that everything had been given, there was an equally serious endeavour, through the safeguards, to convince Britishers that nothing had been lost. "A realistic analysis of the nature and content of these safeguards, however, reveals the fact that the British were trying to safeguard their own vested interests by forming an alliance with the conservative forces in India—the Muslims and the Indian Princes—against the rising tide of democratic nationalism. As the Indian Princes were opposed

to democracy and the Muslims to majority rule, British rulers found it easy and useful to exploit their fears for their own ends. The safeguards were thus intended to safeguard the interests of these three parties—the British, the Muslims and the Indian Princes.¹ Mr. Jawahar Lal Nehru must have these safeguards in view when he described the Act of 1935 as “all brakes and no engine.”

HOME GOVERNMENT

Secretary of State : In the Act of 1935, the Provinces were treated on a federal basis and were given some autonomous character. The general power of ‘superintendence, direction and control’ over the entire Indian administration, so far possessed by the Secretary of State, no longer fitted with the new status of the Provinces. This is, probably, why no explicit mention was made of this power, as belonging to the Secretary of State. Henceforth, this power was shown as vested in the Crown. The change, however, was more nominal than real. Whatever powers the Crown possessed, could be exercised in practice by its instrument, i.e., the Secretary of State, through whom only the Crown could act.

Even after April 1, 1937, the Secretary of State had the power to interfere in the Indian administration in many ways. In all cases where the Governors and the Governor-General actually exercised or were expected to exercise any power in discretion or in individual judgment, they were bound by the instructions of the Secretary of State. When one visualizes the all-embracing and comprehensive nature of those powers, one wonders if there was any important field of the Indian administration, in which the Secretary of State could not legally interfere. As the Government of India Act, 1935 was not implemented at the Centre, the control of the Secretary of State over the Government of India remained as before. Regarding the Provinces, the intention was that the Secretary of State should not interfere in matters which were outside the sphere of the Governors’ powers of discretion and individual judgment. Actually, however, the Indian affairs continued to be regulated from the White Hall even after April 1, 1937, as before.

Advisers of the Secretary of State : The Act of 1935 introduced some structural changes in the constitution of the India Council. In law, the India Council was dissolved. To take its place, a set of Advisers to the Secretary of State was appointed. The number of the Advisers was fixed between three and six. At least one half of the Advisers were required to have served in India for at least ten years, and must not have left India more than two years before the date of their appointment. Their tenure of office continued to be five years, but they were no longer eligible for reappointment. (The Advisers received a yearly salary of £1,350

1. Punniiah : Constitutional History of India, p. 319.

+ S. S. had power to interfere in Indian administration in many ways.

a year) with £600 extra for the Indian members. (The salaries of the Advisers were to be met from the British revenues)

Whereas the India Council was a corporate body, the Advisers were treated as individuals. (The Secretary of State was given the liberty to consult them either collectively or individually. He could consult some and ignore others) He was not bound to consult the Advisers, except in matters relating to the Superior Services, where all decisions required a concurrence of the majority of the Advisers. The detailed provisions regarding the Advisers were to be implemented after the introduction of the Federation, which was never done. During the transitional period, the number of the Advisers could remain between eight and twelve, as was the case with the out-going India Council. (The old Councillors could be appointed as Advisers by the Secretary of State) This was actually done.

(Although the Advisers no longer possessed a corporate character and their position *vis-a-vis* the Secretary of State was weak as compared with that of the India Council), they continued to be a group of ex-service men from India, who were, on the whole, inimical to Indian political aspirations. The label was changed, possibly as a gesture of concession to the Indian demand for the abolition of the Council, but the substance remained the same. The progressive body of Indians looked upon (the Advisers with as much suspicion as upon the India Council)

High Commissioner for India : In the Act of 1935, a slight change was made in the method of the appointment of the High Commissioner. He was to be appointed by the Governor-General in his individual judgment.) While acting in his individual judgment, the Governor-General was bound to consult the Ministers, but was free to follow their advice or not. As the federal part of the Act was not implemented, (the High Commissioner continued to be appointed by the Governor-General-in-Council) Thus the High Commissioner continued to be a nominee of the Governor-General between 1921 and 1946.

After the Montford Reforms, the Central Legislature began to take interest in the work of this Officer. Whenever the High Commissioner made purchases or entered into contracts, which ignored Indian commercial or industrial interests, his action was exposed in the Central Legislature. With the formation of the Interim Government in 1946, the High Commissioner came to be appointed by the representatives of the people of India, and from that date, the agency work began to be performed exclusively in the interests of India. Mr. Krishna Menon held this post from 1946 to 1952.

Expenses of the office of the Secretary of State : After the Montford Reforms, (the expenses of the establishment of the Secretary of State continued to be met from the

Indian revenues) but the British Government made an annual contribution of £150,000 by way of meeting a part of the expenses. (The Act of 1935 charged the expenses of the office of the Secretary of State to the British revenues,) with the stipulation (that the Government of India would make such annual contribution to meet those expenses as were mutually agreed upon by the British Treasury and the Governor-General. This was simply a reversal of the previous arrangement)

CONTROL OF BRITISH PARLIAMENT OVER INDIAN AFFAIRS

The nature of the control exercised by the British Parliament may be studied under five periods : (i) 1693 to 1784 ; (ii) 1784 to 1858 ; (iii) 1858 to 1920 ; (iv) 1920 to 1937 ; and (v) 1937 to 1947. It was from 1693 that the Parliament began to assert its authority to control the affairs of the East India Company. In 1773, the Regulating Act was passed, which was the first attempt on the part of the Parliament to set up a government for the territories acquired by the Company in India. In 1784, the Board of Control was set up as a superior body over the Board of Proprietors and the Court of Directors. This was the first attempt on the part of the Parliament to set up an executive instrument of its own in London to control the Indian affairs. From 1784 the Period of the Double Government started and ended in 1858, when both the Board of Control and the Court of Directors were abolished and the Secretary of State-in-Council became the sole instrument of control. From 1858 till the introduction of the 1919 Act, the Central as well as the Provincial Governments in India remained responsible only to the British Parliament. Hence the question of placing any limitations on the powers of the Parliament to interfere in the Indian affairs did not arise. The Secretary of State possessed the power of "superintendence, direction and control" over the entire Indian administration. The British Parliament controlled India by controlling the Secretary of State, who was responsible to and removable by it.

Here it may be added that the British Parliament is the legal Sovereign of England. The British theory about the sovereignty of the Parliament admitted no legal limitations on its powers. Hence, legally speaking, the British Parliament continued to possess unlimited power over India till the 14th August, 1947. This, however, does not mean that the Parliament never observed any limitation in practice on its right to control the Indian affairs. Some such limitations in practice were observed after the introduction of the 1919 Act, which are described below.

The Period from 1921 to 1937 : Dyarchy was introduced in the Provinces from 1921. The transferred subjects were placed under the charge of popular Ministers, who were removable by their respective Legislative Councils. This was the first instalment of

responsible government granted to India. Unlimited powers of the Parliament to interfere in the Indian administration fitted ill with the new position of the Provinces. No legal relaxation in the control of the Secretary of State or the British Parliament was, however, permitted, although this was clearly against the spirit of the partial responsibility introduced in the Provinces. The Act of 1919 kept the general power of "superintendence, direction and control" of the Secretary intact.

But in order to bring the position somewhat in keeping with the spirit of Dyarchy, some Rules were framed and it was provided that over the transferred subjects in the Provinces the power of "superintendence, direction and control" of the Secretary of State should be restricted to the minimum. The Secretary of State continued to possess full control over the central subjects and the reserved subjects in the Provinces. Regarding the central subjects and the reserved subjects in the Provinces, it was further provided by the rules that a convention was to be started, whereby in matters of purely Indian interests, wherever there was an agreement between the Government of India and the Legislature, the Secretary of State and the Parliament would not, ordinarily, interfere.

This convention was beset with difficulties in practice. Firstly, purely Indian interests were difficult to be defined because very often the British Government passed British interests as Indian interests. Secondly, the agreement of the Government of India, which meant the agreement of the Governor-General and his irresponsible Executive Council with the Indian Legislature, was quite difficult to achieve. And thirdly, the Indian Legislature was so composed—based as it was on the representation of different communities, classes and interests—that the elected members were not able to present always a common front to the Government, even on matters vital to Indian interests. The Government of India was not expected to agree in matters which, in its opinion, adversely affected the Imperial interests. In practice, however, the convention worked successfully in some cases. Immediately after the Reforms of 1919, the Government of India imposed import duties on foreign goods to help the Indian industry. Import duty on cloth was imposed, along with duties on other articles, with the agreement of the Government of India and the Legislature. The Lancashire manufacturers of cloth got very much perturbed and met Mr. Montagu, the then Secretary of State for India, in a deputation. Mr. Montague refused interference in the light of the convention. Mr. Wedgwood Benn, who was the Secretary of State under the Labour Government during 1929-31, endorsed the view taken by Montagu. But these were comparatively minor matters. The progressive opinion in India was never satisfied with this conventional basis of relaxation of control because it depended entirely on the sweet will of the Government.

Position after April 1, 1937 : The Act of 1935 was introduced in the Provinces on April 1, 1937. From that date, the Provinces were treated on a federal basis and were accorded a somewhat autonomous character. Atleast in theory, the Provincial Governments were no longer the agents of the Government of India. A Federation was to be introduced at the Centre. To bring the position in keeping with the new changes, the general power of "superintendence, direction and control", possessed by the Secretary of State over Indian affairs so far, was dropped. But as the Federation was not introduced at the Centre, the old conventional basis continued to hold good as far as the central subjects were concerned.

In the Provinces from April 1, 1937, popular Ministeries were instituted, which were responsible to the Provincial Legislative Assemblies. This demanded a new orientation in the nature and extent of control, so far exercised by the British Parliament over the Provinces. In June, 1937, after the introduction of the Act of 1935 in the Provinces, Mr. Churchill put a question in the House of Commons to Mr. N. Chamberlain, the then Premier, regarding the permissible nature and the extent of the Parliament's control over the Indian affairs after April 1, 1937. Mr. Chamberlain's reply was that, as long as the transitional period lasted, the Parliament would have control over the central subjects and the Central Government as before. But there was no power of interference left in the hands of the Parliament regarding matters which were within the exclusive competence of the Provincial Ministers. On such matters, the Parliament was not justified in putting questions to the Secretary of State. But where a Governor had taken action in his discretion or individual judgment, or he ought to have taken such an action, or a special responsibility was placed on a Governor, the members of the Parliament could exercise control. But in view of the vague, all-embracing and comprehensive nature of such powers of the Governors, there remained innumerable excuses for the British Parliament to interfere, even in the Provincial sphere, after April 1, 1937. But in practice, the British Parliament almost stopped interference in Provincial matters.

After the coming into office of the Interim Government under Mr. Nehru in August, 1946, the British Parliament stopped interference altogether in the internal matters of the Indian administration. The Control of the British Parliament ended completely from August 15, 1947 the date from which the Indian Independence Act came into force.

CHAPTER XX

FEDERAL CENTRE

The Federal Executive under the Act of 1935 consisted of three parts : (i) The Governor-General and Crown's Representative ; (ii) the Councillors ; and (iii) the Council of Ministers.

GOVERNOR-GENERAL UNDER FEDERATION

There was a slight change in the designation of the Governor-General under the Act of 1935. So far, he was called simply the Governor-General. Henceforth, he was to be known as the Governor-General and Crown's Representative. As the Governor-General, he was to be the chief executive of the Federation and as Crown's Representative, he was to be in charge of the Indian States. Because of these dual duties, it was made permissible to appoint two persons—one as the Governor-General and the other as Crown's Representative. In practice, however, the same person continued to perform both these roles.

This bifurcation in the office of the Governor-General was "a needless concession to the historically incorrect claim" of the Indian States that they were under the Crown, and not under the Government of India. Such a demand was made by the Princes because they did not want to be placed under the Government of India, in the event of power coming into the Indian hands. With the introduction of a partial responsibility at the Centre, it was only a matter of time, when complete responsibility would be passed over to Indians. This would end, the Princes feared, their personal rule. The British Government agreed to this demand because it meant a possibility of the Indian States remaining tied to the apron-strings of the British Empire, even after Independence had been granted to the British Indian Provinces which were clamouring for it. The step also assured separate control of the Crown over the non-federating Indian States and over that sphere of the activities of the federating States, in which power was not to be handed over to the Federation.

Powers of the Governor-General : The Governor-General was given three kinds of powers : (i) powers to be exercised in his discretion ; (ii) powers to be exercised in his individual judgment ;, and (iii) powers to be exercised on the advice of the Ministers.

(i) Powers exercised in discretion : In the exercise of these powers, the Governor-General was not bound to consult his Ministers

although he could do so, if he so liked. It has been calculated that, in not less than 94 sections of the Government of India Act, 1935, there was a mention of the powers of the Governor-General to be exercised in his discretion. These powers covered a very big sphere of administration and extended to all important subjects, vital to Imperial interests. While a Governor-General was exercising any power in his discretion, the Ministers were to remain as silent spectators and pathetic observers. This was the biggest cut in the powers of the popular Ministers under the Federation.

(ii) **Powers exercised in individual judgment :** In the exercise of these powers, the Governor-General was bound to consult the Ministers but he was free to follow their advice or not. This power was mentioned in more than 32 sections of the Act. The Ministers were given the right of being consulted. Here there was a possibility of Ministers influencing the decisions of the Governor-General. Evidently, from the nationalist point of view, these powers were less dangerous than the powers in discretion.

Wherever the Governor-General exercised, or could exercise any power in discretion or in individual judgment, he was bound by the instructions of the Secretary of State. This made the interference of the Secretary of State and the British Parliament possible in all such matters.

(c) **Powers to be exercised on the advice of the Ministers :** Where the Governor-General was not to act in his discretion or in his individual judgment, he was bound to follow the advice tendered by the Ministers. Here the powers of the Ministers were real, but this was a very insignificant sphere left after deduction of vast powers under the first two categories.

(1) **Executive Powers :** The Councillors who were to be in charge of the reserved subjects were appointed by the Governor-General and were responsible to him alone. The entire executive authority was vested in him. He was legally given the power of appointing and dismissing the Ministers too, although in actual practice, this power was to belong to the leader of the majority party in the Lower House of the Federal Legislature. The Governors of the various Provinces were under his control. The administration of Defence, External Affairs, Foreign Affairs and Tribal Areas was to be carried on in his discretion. The Advocate-General was to be appointed by the Governor-General in his individual judgment and was to hold office during his pleasure. The Governor-General was to appoint the High Commissioner for India in England in his discretion. The Governors of Provinces, other than Bengal, Madras and Bombay, were to be appointed on his recommendation. He was to exercise control over the Federal Railway Authority in his discretion.

Legislative Powers : Apart from the legislative powers which are usually possessed by the Chief Executives of the States, the

Governor-General was armed with some extraordinary legislative powers of making Ordinances and Governor-General's Acts. He was authorised to issue an Ordinance when the Federal Legislature was not in session. Such an Ordinance required to be laid before the Federal Legislature when it reassembled and ceased to be effective six weeks after the meeting of the Houses, if not disallowed earlier by resolutions of the Houses. Again, the Governor-General could issue an ordinance in emergency for the satisfactory discharge of his duties involving individual judgment or discretion and such Ordinances were to remain in force for six months and could be extended for a further period of six months by another Ordinance. When so extended, it was required to be communicated to the Secretary of State, who was to lay it before both the Houses of the British Parliament. Besides, he could make Governor-General's Acts even when the Federal Legislature was in session. Such Acts were to be communicated to the Secretary of State and had the force of a law passed by the Federal Legislature.

Financial Powers : The financial powers of the Governor-General were equally vast. He was to decide the votable and non-votable parts of the expenditure. A statement of the estimated receipts and expenditure of the Federation for every financial year was to be laid before the Legislature by his orders. He could restore, reject and reduce a demand for grant. A demand for grant could not be made except on his recommendation. All financial bills required his previous assent. He could authorise the incurring of any expenditure in emergency. He was to appoint a Financial Adviser in his discretion to advise him in discharging his special responsibility for the financial stability and the credit of the Federation. The salaries and conditions of service of the Financial Adviser were to be regulated by the Governor-General. This officer should not be confused with the Finance Minister who was to be incharge of the Finance Department. The Indian national opinion was against the appointment of this functionary. It was feared that in the absence of a clear division of the sphere of responsibility, the duties and functions of these two officers might overlap and the Financial Adviser might become the watch-dog of the financial interests of the British trade and Government in this country.

Power to suspend the Constitution : Under section 45 of the Act, if at any time the Governor-General was satisfied that the Government of India could not be carried on in accordance with the provisions of the Act, he could declare that his functions, as specified in the Proclamation, would be exercised in his sole discretion and he could assume all or any of the powers vested in or exercisable by the Federal authority, except that of the Federal Court. Such a proclamation required to be communicated, forthwith, to the Secretary of State for India and was required to be laid before both the Houses of the Parliament. It ceased to operate

after six months, unless approved in a resolution of both the Houses in which case it was to remain in force for a further period of twelve months. Such a Proclamation could not last longer than three years.

Instrument of instructions to the Governor-General : The document issued by the British Government containing instructions to the Governor-General regarding the manner in which he was to exercise his powers in discretion, individual judgment and special responsibilities was called the Instrument of Instructions. Under the Instrument of Instructions, the Governor-General was directed to include, as far as possible, among the Ministers, members of the minority communities as well as representatives of the Indian States. He was also directed to encourage collective responsibility among the Ministers as far as possible. He was further advised to select the Ministers on the advice of the leader of the majority party in the Federal Assembly. The validity of any act of the Governor-General could not be questioned on the ground that it was not in accordance with the Instrument of Instructions. These instructions were to become the starting point of conventions, which were to govern the working of the Council of Ministers under the Federation.

Special Responsibilities : Under section 12 of the Act, the special responsibilities of the Governor-General were : (a) the prevention of any grave menace to the peace and tranquillity of India or any part thereof ; (b) the safeguarding of the financial stability and credit of the Federal Government ; (c) the safeguarding of the legitimate interests of Minorities ; (d) the protection of the legitimate interests of the Public Services ; (e) the prevention of discrimination against the United Kingdom ; (f) the prevention of any discrimination against the goods of United Kingdom or Burmese origin ; (g) protection of the rights of any Indian State or its Ruler ; and (h) securing due discharge of an action taken by the Governor-General in his discretion or in individual judgment.

It may be noted that the Governor-General, as envisaged by the Act of 1935 and described above, never functioned in practice because of the rejection of the federal part of the Act by all popular Parties in India. The Governor-General-in-Council, set up under the Act of 1919 in 1921, continued to govern India right up to 14th August, 1947, with minor adjustments here and there.

6) DYARCHY AT THE CENTRE

The central subjects under the Act of 1935 were divided into two parts—one may be called the reserved part, and the other, the transferred. Defence, ecclesiastical affairs, external affairs and tribal areas were the reserved subjects. All the remaining subjects in the Central List were treated as transferred. In the

Act of 1935, the words reserved and transferred were not actually used ; but to those who are familiar with their meaning in relation to the Provincial subjects under the Act of 1919, the use of those words here may be helpful for a clear understanding.

Councillors : The administration of the reserved subjects was to be carried on by the Governor-General with the help of the Councillors. The Councillors were to be appointed by His Majesty's Government and were responsible to the Governor-General alone. Their number was not to exceed three and their salaries and conditions of service were to be fixed and regulated by His Majesty's Government. The number of years for which these Councillors were to be appointed was not fixed. No qualifications were laid down for their appointment. They were not to have any corporate character and were to be treated as individuals. Their opinion was not binding on the Governor-General. They were given a purely advisory status. These Councillors were not responsible to the Federal Legislature and a no-confidence vote passed against them by the House of Assembly could not remove them. They were to be *ex officio* members of the Federal Legislature, but they did not possess the right to vote. The members of the Federal Legislature could interpellate them. These Councillors constituted the irresponsible part of the Viceroy's Executive team. They were like the Councillors provided for the Governors under the Act of 1919 to administer the reserved subjects.

The Council of Ministers : All the remaining subjects in the Central List were to be administered by the Governor-General with the help of the Council of Ministers. Their member were not to exceed ten. They were legally to be appointed by the Governor-General and could be dismissed by him, but in actual practice, the Governor-General, under the Instrument of Instructions, was required to appoint these Ministers on the advice of the person who was likely to enjoy the confidence of the majority party in the House of Assembly. The Ministers were required to be members of either House of the Federal Legislature. Their salaries were to be fixed by the Federal Legislature and could not be reduced during their term of office. Once fixed, the salaries were regarded as non-votable items, like the salaries of the Councillors. Ministers were responsible to the lower House of the Federal Legislature, and they were required to resign when a vote of no-confidence was passed against them by that House. Ordinarily, the word of the transferred departments was to be carried on by the Governor-General on the advice of the Council of Ministers, except in matters where he was to act in his discretion or in his individual judgment.

Under the Instrument of Instructions, the Governor-General was expected to encourage, among the Federal Ministers the principle of joint responsibility. He was also advised to include, as far as possible, in the Council of Ministers the representatives of

the minority parties as well as the Indian States. Here it may be noted that collective responsibility was not made a legal obligation, but it was to be evolved as a matter of convention.

FEDERAL LEGISLAUTRE

The Federal Legislature under the Act of 1935 consisted of two Houses—the Council of State and the House of Assembly. The Council of State was to contain not more than 260 members, out of whom one hundred and fifty seats were allotted to the British Indian Provinces and 104 to Indian States and six were to be filled in by nomination by the Governor-General. The House of Assembly was to consist of 375 members, out of whom 250 were allotted to the Provinces and 125 to the Indian States. The Council was to be a permanent body. One-third of its members were to retire after every three years, thus giving a long span of nine years for its individual members. It could not be dissolved. The House of Assembly was to sit normally for five years, unless dissolved earlier by the Governor-General in his discretion or unless its life was extended. Both the Houses were to meet at least once a year. The Advocate-General and the Executive Councillors could sit and speak in them as a matter of right, although they were not entitled to vote. The Presiding Officers of both the Houses were to be elected. In the case of the Council of State, these officers were to be the President and the Vice-President and in the case of the House of Assembly, they were called the Speaker and the Deputy Speaker.

The method of election to the Council of State for the Provinces was mostly direct. The representatives of the Indian States were to be nominated by the Rulers. The representatives of the Provinces were to be elected by voters with high property qualifications. The electorate was further based on communal line. It was estimated that the Council of State was to have about 100,000 voters, as against about 17,000 for the whole of the British India in the Council of State under the Act of 1919. The seats in the Council were to be unequally distributed among the various Units of the Federation. The House of Assembly was to be indirectly elected on provincial-cum-communal basis. The members of the Legislative Assemblies of the Provinces were to elect the members of the House of Assembly by the system of proportional representation on a single transferable vote basis.

Indirect Election for the House of Assembly : Under the Morley-Minto Reforms, for the Imperial Legislative Council (which in a way may be described as the predecessor of the House of Assembly), indirect method of election was introduced. But a demand was, off and on, made for the substitution of direct system of election by the national leaders. The Mont-Ford Report admitted the justice of this demand. Consequently, direct system of election was introduced in the Act of 1919, not only

for the Legislative Assembly of India, but even for the Council of State. The Montford Report suggested direct election on the ground that it provided ample scope for the political education of the masses and made them politically conscious and interested. The system of direct election, introduced under the Act of 1919, had worked for about 14 years in India. During all those years, nobody had ever seriously demanded that the system could profitably be reversed. The elected representatives who were sent brought nothing but credit for the system.

When the Act of 1935 was being framed, the desirability of introducing direct or indirect election was discussed. Direct election was strongly advocated by every section of the Indian opinion and by the British India Delegation in their Joint Memorandum. The White Paper also supported direct election. The Joint Parliamentary Committee on Indian Constitutional Reforms, however, recommended indirect election both for the Federal Assembly and the Council of State. The British Parliament, finally, introduced direct election for the Council of State, but accepted indirect election for the Federal Assembly. The Joint Committee advanced some fanciful arguments in favour of indirect election. The Committee thought that the size of constituencies in India was so unwieldy and unmanageable that it was not safe to introduce direct election. This was especially so in view of the extended franchise. Moreover, they thought that, although it was desirable that there should be an intimate contact between a representative and his electors, this would not be possible when the constituencies were so wide and the number of voters so large. Lastly, the Committee felt that it would be easier to change in future from indirect to direct system should that be found necessary while the introduction of direct system meant committing India to adult suffrage before it was practicable. Sir Samuel Hoare supported indirect election in his Memorandum to the Committee. He said, "The ultimate solution may be on the lines of the group system, but whatever the final solution may prove to be, I am convinced that it would be easier to approach it from a system of indirect election rather than from direct."

Case against Indirect Election : The introduction of indirect election for the popular House was opposed with one voice by the nationalist India. It was worked out that constituencies under the House of Assembly of 1935 would be roughly about one-half in size of the constituencies for the Legislative Assembly of 1919. Moreover, in countries like U. S. A., in some cases, constituencies were even larger and contained even greater population and yet the system of election was direct. With the increased facilities for travel in rural areas and the growth of rapid means of communication in the country, the problem of contact between the elector and the elected was being automatically solved. The Act of 1935 had recommended indirect election to the popular House through

the Provincial Assemblies. It was pointed out that Provinces with their communal majorities and minorities and emphasis on provincial politics would control the Central Legislature, and through it, the Federal Ministry. As a result, the Federal Ministry would be weakened and its formation would become more difficult on account of the need for reconciliation of provincial interests. The system would confuse provincial and federal issues. Provincial issues would loom large during the Central elections. Dissolution would become devoid of meaning. Possibilities of corruption would increase because there would be, on the average, seven to eight provincial electors for each member of the House of Assembly. Provincialism would grow at the cost of nationalism. The system of proportional representation by means of single transferable vote (which was proposed) would increase petty groups and parties formed mostly on provincial and communal lines, in the Provincial Legislatures. It would be difficult for any one party to get a clear majority in the Central Legislature. The Central Government would become weak and unstable. It would be compelled to make objectionable compromises between Provincial and national interests.

Foreign experience is overwhelming against indirect method. There is no country of importance in the world today, which has introduced indirect election for its popular House. U. S. A. changed the system from indirect to direct even for the Senate. Even U.S.S.R. made a change from indirect to direct system in 1936. Most of the countries who started with indirect system have now come to direct. In Prussia, indirect system was worked in the lower House and then was given up. So was the case with the lower House of France. Bavaria, a German State, worked it up to 1906, and Norway up to 1905. The Senate of France under the Third Republic was no doubt indirectly elected, but it was the case of an upper House. In Sweden indirect system prevails only for the upper House. In Denmark, 54 out of 56 members of the Lands-thing are indirectly chosen by Electoral Colleges. Direct election, on the other hand, has got some decided advantages. It is in keeping with the spirit of modern democracy. It stimulates interest in public affairs and increases the political intelligence of the masses. It is the best method by which direct contact may be created and maintained between the voters and their representatives. In a politically backward country like India, the utility of direct election for the popular House cannot be over-emphasized in view of its educative value. The system necessitates personal approach by the candidate to his voters and thus helps in creating direct contact between the two.

The Joint Parliamentary Committee and the British Parliament ignored all these arguments and introduced indirect method of election for the House of Assembly, which - proved one of the chief causes for the rejection of the Federal Part of the Act.

The following tables¹ show the allocation of seats for *British India* in the Council of State and the House of Assembly under the Act of 1935 :—

COUNCIL OF STATE

Province or Community	Total	General	Scheduled Castes	Sikhs	Muslims	Women
Madras ...	20	14	1	—	4	1
Bombay ...	16	10	1	—	4	1
Bengal ...	20	8	1	—	10	1
United Provinces ...	20	11	1	—	7	1
Punjab ...	16	3	—	4	8	1
Bihar ...	16	10	1	—	4	1
Central Provinces & Berar	8	6	1	—	1	—
Assam ...	5	3	—	—	2	—
North Western Frontier Province ...	5	1	—	—	4	—
Orissa ...	5	4	—	—	1	—
Sind ...	5	2	—	—	3	—
British Baluchistan ...	1	—	—	—	1	—
Delhi ...	1	1	—	—	—	—
Ajmer-Merwara ...	1	1	—	—	—	—
Coorg ...	1	1	—	—	—	—
Chosen by Governor-General in his discretion	6	—	—	—	—	—
Anglo-Indians ...	1	—	—	—	—	—
Europeans ...	7	—	—	—	—	—
Indian Christians ...	2	—	—	—	—	—
Total	156	75	6	4	49	6

1. Palande : Indian Administration (9th Ed. 1943), pp. 210-11.

HOUSE OF ASSEMBLY

Province	Total Seats	Total of General Seats	General Seats reserved for Scheduled Castes	Sikhs	Muslims	Anglo-Indians	Europeans	Indian Christians	Commerce and Industry	Land-holders	Labour	Women
Madras ...	37	19	4	—	8	1	1	2	2	1	1	2
Bombay ...	30	13	2	—	6	1	1	1	3	1	2	2
Bengal ...	37	10	3	—	17	1	1	1	3	1	2	1
United Provinces ...	37	19	3	—	12	1	1	1	—	1	1	1
Punjab ...	30	6	1	6	14	—	1	1	—	1	—	1
Bihar ...	30	16	2	—	9	—	1	1	—	1	1	1
C.P. and Berar ...	15	9	2	—	3	—	—	—	—	1	1	1
Assam ...	10	4	1	—	3	—	1	1	—	—	1	—
N.W. Frontier Province	5	1	—	—	4	—	—	—	—	—	—	—
Orissa ...	5	4	1	—	1	—	—	—	—	—	—	—
Sind ..	5	1	—	—	3	—	1	—	—	—	—	—
British Baluchistan ...	1	—	—	—	1	—	—	—	—	—	—	—
Delhi ...	2	1	—	—	1	—	—	—	—	—	—	—
Ajmer-Merwara ...	1	1	—	—	—	—	—	—	—	—	—	—
Coorg ...	1	1	—	—	—	—	—	—	—	—	—	—
Non-Provincial Seats...	4	—	—	—	—	—	—	—	3	—	1	—
Total	250	105	19	6	82	4	8	8	11	7	10	9

POWERS OF THE FEDERAL LEGISLATURE

(a) **Legislative Powers :** The Federal Legislature had power to make laws for the British Indian Provinces with regard to all subjects in the Central as well as the Concurrent List ; for the Chief Commissioners Provinces on all matters, and for the federating States on all subjects handed over to the Federation under the Instruments of Accession. For becoming an Act, every law required to be passed by both the Houses and assented to by the Governor-General. In case there was a difference of opinion between the two Houses, a joint meeting of the Houses was to be called,

where a majority decision prevailed. In this joint sitting, the will of the Assembly was apt to prevail, in view of the largeness of its members.

Executive Powers : The executive powers of the two Houses were not alike. The Council of Ministers was responsible to the House of Assembly alone, which could remove the Council of Ministers by a vote of no-confidence. But this power was not given to the Council of State. Both the Houses possessed the usual rights of asking questions and supplementary questions from the members of the Government, moving resolutions and adjournment motions. The House of Assembly could remove an individual Minister by an adverse vote. The Councillors were not so removable, although they were bound to answer questions, etc.

Financial powers : The powers of the two Houses were almost equal in money matters, except that Money Bills could originate only in the Lower House. The Governor-General had the power to decide the items, which were to be charged on the revenues of the Federation. Such items of expenditure, representing about 80 per cent of the budget, were beyond the control of the Federal Legislature and no voting could take place on them. Regarding the remaining 20% of the expenditure, the items were to be moved in the form of Demands for Grants, first in the Lower House and then in the Council of State. It is quite unusual to give the power of voting Grants to an upper House, but this was done in India. The Governor-General had the power to reinstate a Grant, refused or reduced. The Money Bills required his previous consent. The budget could not be presented, except by his order. Thus we find that the financial powers of the Federal Legislature were restricted to a considerable extent by the financial powers of the Governor-General.

It may be added that the Federal Legislature described above was not introduced in practice because of the rejection of the Federal Part of the Act by India. No further description is, therefore, added.

FEDERAL COURT

Before the introduction of the Act of 1935, India was treated as a unitary government. Whatever powers the Provinces enjoyed were, in theory at least, a mere delegation by the Centre. Whenever there was a dispute between the Provinces *inter se* or between the Centre and a Province, it was decided according to the wishes of the Centre. Under the Act of 1935, the Provinces were given a somewhat autonomous character and they *began to be treated on a federal basis*. As in other federations, an independent Court became necessary to decide future disputes between the Units. The Act of 1935 was introduced in the Provinces from April 1, 1937 and the Federal Court started functioning from December, 1937. The main

functions of such a Court in a federation are to interpret and protect the constitution, to decide disputes between the Centre and the Units and between the Units *inter se* and to act as the guardian of the rights conferred on the citizens by the constitution.

Constitution of the Federal Court : Under the Act of 1935, the Federal Court was to consist of a Chief Justice and six additional Judges, but actually a Chief Justice and only two additional Judges were appointed. They were appointed by His Majesty's Government on the basis of certain high legal qualifications. They were to hold office during good behaviour. Retiring age was 65. Their salaries were fixed by His Majesty-in-Council and were charged on the central revenues and could not be changed to their disadvantage during their tenure. No Judge of the Federal Court could be removed, except on the request of the Crown to the Judicial Committee, which was to decide on merits. A permanent tenure, assured and good salary and difficult method of removal were provided to keep the Judges absolutely independent and unmindful of the favours and frowns of the highest Executive and Legislature in India. The Court carried on its work at Delhi.

Jurisdiction : The Federal Court possessed various types of jurisdictions. Firstly, it had original jurisdiction to decide disputes between the Units *inter se* or between the Centre and the Units on any question arising out of the interpretation of the Constitution. Such cases were considered to be of primary importance and the Federal Court was to hear them in the first instance. Secondly, the Court had appellate jurisdiction over decisions of the High Courts in the British Indian Provinces, when the case related to some constitutional matter and when the High Court in question granted a certificate that the case was a fit one for appeal to the Federal Court and involved a substantial question of law for decision. Similarly, a case could be taken to the Federal Court in appeal from the decision of a court in any Indian State, subject to the terms of the Instrument of Accession and with the approval of the Ruler of the State. As the Federation was not formed and the States did not come under the jurisdiction of the Federal Court, no case from the States was ever heard by the Federal Court. This was also the reason, why the total strength of the Court was not constituted. Thirdly, the Federal Court possessed advisory jurisdiction. The Governor-General could refer any point of law to it for advice. Such an advice was tendered in an open Court. Lawyers were admitted from all parties concerned, and only then the advice was given.

The Federal Court was the highest court in India. It was given the power to make rules and regulations concerning its own business and all the subordinate courts in India. The Governor-General could entrust any extra work to any Judge of the Federal Court in his individual capacity. The Rajkot case, in which there was some dispute between Mr. Vallabhbhai Patel and the Ruler of

Rajkot, regarding some agreement arrived at between them, was referred to Sir Maurice Gwyer by the Governor-General.

Its importance : A Federal Court is indispensable in a constitution having a federal structure. The Federal Court in India was the first All-India Court. Sir B.L. Mitter, the Advocate General of India, said, "With the introduction of the Federal Court, the rule of law will be extended to inter-Provincial spheres and disputes between Units will be decided on an all-India basis". It was the final interpreter of the Constitution in India. During the Second World War, the Federal Court boldly safeguarded the civil liberties of the people against arbitrary acts of the Executive. Under the Defence of India Rules, thousands of Indians were arrested without trial and kept under detention. When a case came before the Federal Court regarding the legality of the Defence of India Rule in question, it declared that the Rule was *ultra vires* or illegal and thus beyond the power of the Government of India. The Federal Court functioned in India for about twelve years, till its transformation into the Supreme Court of India in 1950 under the present Constitution. The actual working of the Court was praiseworthy and it won a permanent place in the history of judicial administration in India. The credit for its excellent work mostly goes to Sir Maurice Gwyer, who guided the destiny of the Court in its formative years as its first Chief Justice.

While inaugurating the Court in December, 1937, Sir Gwyer said, "The Federal Court will become, like similar courts in other countries, at once the crucible in which the flux of current and political thought is tested and refined, and the anvil on which the more stable and permanent elements of it are hammered into shape, to take their place in that armoury of ideas with which each generation seeks to solve its own problems. Independent of Governments and Parties, the Court's primary duty is to interpret the Constitution. It would be its endeavour to look at the Constitution, not with the cold eyes of an anatomist, but as a living and breathing organism, which contains within itself, as all life must, the seeds of future growth and development. Its canons of interpretation would not hamper the free evolution of those constitutional changes for which the law provided no sanction, but in which the political genius of a people can find its most fruitful expression." By following such a laudable canon of interpretation, the Federal Court was able to breathe new life into the dry bones of the Act of 1935. It succeeded "to establish canons of independence of judiciary from executive influence in India". The notorious Law of Sedition, which made even legitimate criticism of the Government punishable, was given "a rational and realistic" basis. "Public disorder or the reasonable anticipation or likelihood of public disorder," was declared by Sir Maurice Gwyer as 'the gist of the offence'. No doubt, the Federal Court was able to make 'a decisive contribution' in the constitutional development of India.

CHAPTER XXI

(u) MACHINERY OF PROVINCIAL AUTONOMY

The Government of India Act, 1919 was applied in ten Provinces, including Burma. The Act of 1935 separated Burma from India and created two new Provinces of Sind and Orissa. Thus, Provincial Autonomy was introduced in eleven Provinces; namely, Madras, Bombay, Bengal, the United Provinces, Punjab, Bihar, the Central Provinces and Berar, Assam, the North-Western Frontier Provinces, Orissa and Sind. The constitutional machinery in all these Provinces was similar. Apart from the above-mentioned Provinces, there were some backward areas in some of the Provinces, which were not considered fit for the introduction of responsible form of government. These territories were called Excluded and Partially Excluded Areas. Their administration was not entrusted to the responsible Ministers, but was made a special responsibility of the Governor in each Province. There was yet another type of Areas, which were given a special administrative set-up for various reasons. These were the Chief Commissioners' Provinces and included Delhi, British Baluchistan, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands. These Areas were administered through the Chief Commissioners appointed by and responsible to the Governor-General-in-Council.

RELATION BETWEEN THE CENTRAL AND PROVINCIAL GOVERNMENTS

The relations between the Central and the Provincial Governments from April 1, 1937, i. e., after the introduction of Provincial Autonomy, were governed by the provisions of the Act of 1935. As Federation was not introduced at the Centre, the Government of India continued to be represented by the Governor-General-in-Council. Under the Act of 1919, whatever powers were enjoyed by the Provinces accrued to them under the Devolution Rules. It was a mere delegation of authority by the Government of India to the Provinces. No legal limits were placed on the authority of the Government of India to interfere in the affairs of the Provinces, although in practice the administration of transferred subjects was left to the charge of the popular Ministers. The most important departure under the Act of 1935 was that Provinces were invested, for the first time, *with a separate legal authority*. The Provinces were no longer the mere agents of the Government of India. They were clothed with a statutory authority or status *vis-a-vis* the Central Government. Although Federation was not

introduced at the Centre, the Provinces began to be treated on a federal basis with effect from April 1, 1937 and they were accorded somewhat an autonomous character.

Legislative Relations : The legislative relation between the Central Government and the Provinces was regulated according to three Lists of subjects provided under the Act. The Central Government was empowered to legislate on the Federal List. The Provinces were authorized to enact laws on the Provincial List. The Centre as well as the Provinces were competent to undertake legislation on the Concurrent List. In case of a conflict between a Central and a Provincial law on a subject in the Concurrent List, the Central law was to prevail. This is the normal procedure, followed in other federations like Switzerland, regarding subjects in the Concurrent List. But the framers of the Act did not stop after laying down this simple rule. It was feared that such a procedure would enable an active and more enthusiastic Centre to oust Provincial jurisdiction entirely from the Concurrent field. Muslims were especially keen to guard against such a tendency because they were suspicious of the powers of the Centre, which was bound to be under a Hindu majority. It was, therefore, added that, if a Provincial law on a Concurrent subject had received the previous assent of the Governor-General, it would prevail against an earlier Central law. The Central Legislature could, however, again legislate on the same subject, and its law took precedence, if it had received the previous assent of the Governor-General. Such a complicated arrangement was introduced in order to make the Governor-General the final judge in cases of conflict between the Centre and Provinces on the Concurrent List.

The practice in other federations is to give the residuary powers either to the Centre or to the Units. Under the Act of 1935, the residuary powers were neither given to the Centre nor to the Provinces. It was laid down that whenever there was a doubt whether a particular subject belongs to the Centre or the Provinces, it was for the Governor-General to decide finally as to who should exercise that power. It was of the nature of a judicial power and is usually entrusted to the Federal Courts in other federations. It was wrong in principle to entrust such a power to the Executive Chief. This was again an attempt to erect the Governor-General to the position of an arbitrator between the Centre and the Provinces.

It was further provided that in case of a grave emergency the Federal Legislature would possess the power to make laws with regard to any matter enumerated in the Provincial List. The previous assent of the Governor-General was also made obligatory for the introduction of many types of bills in the Provincial Legislature.

Executive Relations : The Executive authority of every Province extended to those matters on which its Legislature was competent to legislate. There was thus a distinct sphere where the Executive authority of the Province was to take precedence. The Provinces were no longer administratively under the general 'superintendence, direction and control' of the Government of India.

The following restrictions could, however, be imposed by the Central Government on the Executive powers of the Provinces. Firstly, the Executive authority of the Province was to be so exercised as to secure respect for the Central laws applicable in a Province. Secondly, the Governor-General could direct a Governor to discharge, as his agent, such functions as the Governor-General might consider necessary. Thirdly, the Governor-General could, with the consent of the Governor, entrust to the Provincial Government or its officers any functions in relation to the Central subjects. The Central Legislature could also confer powers and impose duties upon a Province or its officers concerning Central subjects. The cost was to be borne by the Centre. Fourthly, the Executive authority of the Province was to be exercised in such a manner as not to impede the exercise of the Executive authority of the Centre. Fifthly, disputes between Provinces regarding supplies of water from natural sources, were to be referred to the Governor-General for his final decision. Sixthly, the Governor-General could recommend to the British Government for the establishment of an inter-Provincial Council for dealing with matters of mutual concern between the Provinces. Seventhly, the Governor-General could give direction to the Governor regarding the manner in which his Executive authority was to be exercised for preventing any grave threat to the peace and tranquillity of India or any part thereof. And finally, in all those matters where a Governor acted in his discretion or in individual judgment, he was bound by the instructions of the Governor-General. Thus it will be seen that the Executive authority of the Province could be restricted by the Central Government in many ways.

Financial Relations : Please see Chapter on Financial Devolution.

✓ THE GOVERNOR

The British Government claimed that Provincial Autonomy was conferred on the Provinces by the Government of India Act, 1935. In any honest and straightforward scheme of Provincial Autonomy, the Governor should have been reduced to the position of a constitutional ruler, but this was not done. The Governor was given a pivotal position in the entire Provincial administration.

POWERS OF THE GOVERNOR

The powers of the Governor were of three kinds :—

(i) **Powers to be exercised in discretion :** Some of the powers given to the Governor were to be exercised by him in his discretion. While so doing, he was not bound even to consult the Ministers. There was, however, no bar if the Governor on his own initiative proposed to consult the Ministers even in the discharge of these powers. Some of the most important and vital functions were to be performed by the Governor in his discretion. In the discharge of these functions, he could altogether ignore the popular Ministers. Hence, these powers substantially reduced the amount of autonomy conferred on the people of the Province to run the Provincial affairs in whatever way they liked.

(ii) **Powers to be exercised in individual judgment :** In the discharge of these powers, the Governor was duty-bound to consult the Ministers, but he was free to follow their advice or not. The autocracy of the Governor was less irksome in the discharge of these powers as compared with his powers in discretion ; but here also, he could ignore the wishes of the Provincial Ministers. The Governor was expected to keep an open mind while discharging these functions ; and thus, there was a possibility of the Ministers influencing the decisions of the Governor. These powers were another set of limitations on Provincial Autonomy.

It is important to note that whenever the Governor exercised any power in discretion or individual judgment, he was under the direction and control of the Governor-General and the Secretary of State. So far as these powers were concerned, the Governor-General and the Secretary of State could interfere in the Provincial administration and could dictate the course of action which the administration in the Provinces must follow. Even the members of British Parliament were competent to interrogate the Secretary of State in these matters.

(iii) **Powers to be exercised on the advice of Ministers :** In all cases where the Governor was not expected to act in his discretion or in his individual judgment, he was bound to follow the advice tendered by his Ministers. The powers in discretion and in individual judgment were so very comprehensive that, if rigidly used, very little was left for Ministers under this category. The Provincial Autonomy conferred was no doubt real, so far as these residuary powers were concerned.

Executive Powers : The Executive powers of the Governor were of various categories :—(a) *With regard to Ministers :* Ministers were appointed by the Governor in his discretion. He could also dismiss them. But, in practice, he was bound to call the leader of the majority party in the Legislative Assembly of the

Province to become the Chief Minister and to name the remaining Ministers. Hence this power of appointment and dismissal of Ministers was more or less formal. The appointment and dismissal of Ministers followed the usual parliamentary method, except in extraordinary cases. The Governor was given the power to preside over the Provincial Cabinet in his discretion. The Ministers, and especially the Secretaries, were expected to keep the Governor informed regarding the course of the Provincial administration, especially in those matters where a special responsibility was placed on the Governor. (b) *Powers with regard to Police Department*: The Governor was given special powers to control the Police Department in the Province. This was deemed necessary in the interest of law and order. The Governor was to approve all Police Regulations in his individual judgment. He was also given the power to lay down that Police secrets would not be disclosed except in a manner and to the authority decided by him. (c) *Powers with regard to Services*: It was a special responsibility of the Governor to safeguard the legitimate interests of the Services. They were to be protected against any injustice done to them. No action against a member of the Superior Services could be taken, except with the approval of the Governor, which he was to give in his individual judgment. The postings and transfers of key-men, like the Deputy Commissioners, were to be decided in his individual judgment.

(ii') **Legislative Powers**: The Governor had the power to summon and to prorogue the Legislative Houses of the Province. He could dissolve the Lower House in his discretion. His assent was necessary to every bill before it became a Law. He could send a bill for reconsideration. He could reserve it for the consideration of the Governor-General and His Majesty's Government. He could stop the discussion of any bill, resolution, adjournment motion or an answer to a question, if he considered such a course necessary for the proper discharge of his special responsibilities. He could address both Houses and could send messages to them. He could call a joint sitting of the Houses to iron out differences between them. Most of these powers were to be exercised in his discretion. These are ordinary legislative powers, usually possessed by the Chief Executive in a State. But apart from these powers, the Governor possessed some extraordinary powers of law-making, which were as follows:—(a) *Power of making Ordinances*: The Governor could make two types of Ordinances. Firstly, when the Legislature of the Province was not in session and the Governor was satisfied that circumstances existed which rendered it necessary for him to take immediate action, he could issue an Ordinance. Such an Ordinance had the same effect as an Act of the Provincial Legislature. It was required to be laid before the Provincial Legislature and ceased to operate at the expiry of six weeks from the reassembling of the Legislature or earlier, if disapproved by both the Houses. Secondly, an Ordinance could also be promulgated, when the Governor

considered an immediate action necessary to discharge his powers in discretion or in individual judgment. Such an Ordinance was valid for six months and could be extended for a further period not exceeding six months. An Ordinance extending a previous one was required to be communicated to the Secretary of State through the Governor-General and was to be laid before both the Houses of the Parliament. Such an Ordinance could be issued during the time when the Legislature was not in session. It was to be issued with the concurrence of the Governor-General, except in very emergent cases. The Governors under the Act of 1919 were not given the power of issuing such Ordinances. (b) *Governors' Acts* : If at any time the Governor felt that legislation was necessary to enable him to discharge his powers in discretion or individual judgment properly, he could by a message to the Legislature explain the circumstances which, in his opinion, rendered such a legislation essential. He could either enact forthwith, as a Governor's Act, a bill containing such provisions as he considered necessary, or he could attach to his message a draft of the bill in question. When the Governor took the second course, he could, at any time after the expiry of one month, enact as a Governor's Act the bill proposed by him, with such amendments as he deemed necessary ; but before so doing, he was to consider any address which might have been presented to him by the Legislature. Such an Act had the same force as an Act of the Provincial Legislature. Every such Act required to be communicated to the Secretary of State through the Governor-General and was to be laid before both the Houses of the Parliament. This power was to be exercised in his discretion. The power of making Governor's Act was even more drastic than the power of certification given to the Governor by the 1919 Reforms. Under the Act of 1919, a bill must have been rejected earlier by the Legislature, before it could be certified to be an Act by the Governor. Here he could proceed even without sounding the Provincial Legislature. Thus we find that the extraordinary powers of the Governors of making Ordinances and Governor's Acts were made much more extensive and arbitrary than those possessed by the Governors under the Act of 1919.

Powers in case of breakdown of the Constitution : Section 93 of the Act gave the Governors the power to strangle, at will, whatever little responsibility was conceded in the Provinces. It was provided that, whenever the Governor was satisfied that a situation had arisen in which the Government of the Province could not be carried on in accordance with the provisions of the Act of 1935, he might, by proclamation, declare that his functions would, to such an extent, as might be specified in the proclamation, be exercised by him in his discretion and assume to himself all or any of the powers vested or exercisable by any Provincial body or authority. Any such proclamation might contain such incidental and consequential provisions, as might appear to him necessary for giving effect to the object of the proclamation. He could not, how-

ever, assume to himself any of the powers of the High Court of the Province, nor he could suspend any provision of the Act relating to the High Court.

Such a proclamation required to be communicated to the Secretary of State and was to be laid before both the Houses of the Parliament. Its operation was limited to six months, unless approved by resolutions of both the Houses of the Parliament; in which case it could continue for a further period of twelve months from the date it would have ceased to operate. But such a Proclamation could, in no case, remain in force for more than three years. Such a proclamation was to be made by the Governor in his discretion and not without the concurrence of the Governor-General.

Special Responsibilities of the Governor : Under section 52 of the Act, the special responsibilities laid on the Governor were : (a) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof; (b) the safeguarding of the legitimate interests of the minorities; (c) safeguarding of the legitimate interests of the public services; (d) the securing of protection against commercial discrimination; (e) the securing of peace and good government of Partially Excluded Areas; (f) the protection of the rights of Indian States and their Rulers; and (g) the securing of the execution of the orders issued by the Governor-General in his discretion. These special responsibilities were to be discharged by the Governor in his individual judgment. We have already noted the main objections made by the national opinion in India against the special responsibilities of the Governor-General of the Federation. That criticism applies, *mutatis mutandis*, here also. The so-called special responsibilities covered the entire field of the Provincial administration. They were vague in the extreme. The Governor could, if he liked, interfere with any and every aspect of the Provincial administration on the pretext of these special responsibilities.

Instrument of Instructions to the Governors : A document, issued by his Majesty's Government, in which instructions were given to the Governors as to the manner in which they should exercise their powers in discretion and individual judgment under the Act of 1935, was known as Instrument of Instructions to the Governors. The draft of this document was prepared by the Secretary of State, presumably, with the approval of the British Cabinet and was approved by both the Houses of the Parliament. Any subsequent amendment or substitution of it also required the approval of both the Houses. Such Instruments had been issued in the past by His Majesty's Government to the Governors of the Dominions. In the case of Dominions, their approval by the Parliament was not required. Such documents had been extensively used by the Crown to grant to the Dominions autonomy in practice,

without bringing about a formal amendment of their Constitutional Acts. In the case of India, subsequent approval by the Parliament was insisted upon and made essential. This showed a distrust by the Parliament even in the Executive of England in the matter of granting political responsibilities to India.

The Instrument of Instructions was not a legal document in the sense that any action of the Governor could not be declared illegal by any court, even if it contravened the provisions of the Instrument of Instructions. The idea of issuing the document was to enable certain healthy constitutional conventions to start, without giving them the rigidity of a law. This was done in the interest of flexibility and adaptability. The steps proposed could be continued or discarded in the light of their subsequent results.

The Instrument to the Governor was a lengthy one. The Governor was advised that the Ministers should be appointed in consultation with the person who was most likely to command a stable majority in the Legislature. As far as practicable, the Ministries should include members of the important minority communities. A sense of joint responsibility should be fostered among them and they should be in a position collectively to command the confidence of the Legislature, i. e., the Legislative Assembly. It may be noted that, under the Act of 1935, the Governor could appoint and dismiss the Ministers in his discretion. But, according to the Instrument, he was to follow the British constitutional practice in the appointment of the Cabinet. Moreover, collective responsibility was not made a legal obligation, as has been done in our present Constitution.

From the foregoing discussion about the position of the Governor, it is clear that he was given a central position in the Provincial administration. It is strange that framers of the Act did not realize that a Governor with so many and so vast powers could not fit into any workable scheme of Provincial Autonomy. The Act also gave autonomy to the Governors. The provincial Autonomy and autocracy of the Governors could not go hand in hand. It was a case of two sharp swords in one sheath.

THE COUNCIL OF MINISTERS

Under the Act of 1935, it was provided that there should be a Council of Ministers to aid and advise the Governor in the exercise of his functions. As already stated, the Ministers were legally appointed by the Governor and could be dismissed by him in his discretion. But under the Instrument of Instructions, the Governor was to appoint the Ministers in consultation with the person, who was most likely to command a stable majority in the Legislative Assembly. This meant that the appointment and

dismissal of the Ministers was to follow the well-established parliamentary procedure of England. The Governor invited the leader of the majority Party in the Legislative Assembly of the Province to become the Chief Minister. It was primarily the privilege of the Chief Minister to suggest the names of the remaining Ministers. The Ministers were to remain in office so long as they retained the confidence of a majority of the members of the Lower House of the Provincial Legislature. The role of the Governor was merely a formal one, as far as the appointment and removal of the Ministers were concerned. Under the Instrument of Instructions the Governor was further advised to include, as far as practicable, members of the important minority communities in the Council of Ministers. This was apparently, done to safeguard the interests of the religious and other minorities which were found in every Province.

No special qualifications were laid down for Ministers except that they should be members of either of the Houses of the Provincial Legislature. If a non-member was appointed as a Minister, he was required to become a member of either House within 6 months of his appointment, otherwise he was to vacate his office. The salaries of the Ministers were to be fixed by an Act of the Provincial Legislature and could be changed from time to time by the same method. But the salaries once fixed could not be reduced during the term of a Ministry and were not voted upon yearly. This provision was in a marked contrast to the provision under the Act of 1919, when salaries of Ministers were voted upon every year and one of the methods of censuring a Minister was to propose a token cut in his salary at the time of such vote. As the life of the Legislative Assembly in a Province was five years, a Ministry once installed, was liable to remain for a period of five years unless the House was dissolved earlier or the Ministry was ousted by the Legislature.

THE PROVINCIAL LEGISLATURE

Under the Act of 1935, far reaching changes were introduced in the Provincial Legislature.

Second Chamber in Provinces : In six out of the eleven Provinces, Second Chambers were introduced for the first time. These six provinces were Madras, Bombay, Bengal, United Provinces, Bihar and Assam. Under the Act of 1919, the Provinces had only Single Chambers. The introduction of Second Chambers was bitterly resented by the progressive opinion in India. Even on the national level, Second Chambers have not escaped criticism. Even in Federations, their utility has been doubted by some famous writers. The usual arguments advanced in favour of their introduction are that they interpolate useful delay, which enables public opinion to express itself fully. They are necessary for

revising bills of the Lower House. Moreover, they act as a healthy check on radical tendencies of the Lower Houses. But these arguments did not find favour with Indian leaders. Their objection to this institution in Provinces was that they were too expensive a luxury for Provinces with their meagre resources. Moreover, the Governors under the Act of 1935 were armed with so many extraordinary powers that the Government could easily exercise whatever check it considered necessary on the popular Houses. The Second Chambers contained the representatives of the rich people and other upper classes in the society. Hence, it was feared that they would always play a reactionary role and prove a stumbling block in the way of progressive element in the Lower House. Second Chambers are found in most countries. One may understand some use in the introduction of a Second Chamber at the Centre in India, but to introduce these institutions in Provinces was a matter of doubtful utility.

The working of Second Chambers, however, showed that much mischief was not done and they seldom succeeded in standing in the way of progressive Bills. This was because the Second Chambers were not given effective powers. It was provided that, whenever there was a conflict between the Chambers, after twelve months of the submission of a Bill to the other House, the Governor in his discretion might call a joint meeting of both the Houses, where the matter would be decided by the majority rule. In a joint meeting the will of the Legislative Assembly was apt to prevail because of its larger membership. The Governor had the power of calling a joint meeting even before the expiry of twelve months if the matter concerned finance or any of his special responsibilities was involved. Moreover, in all the six Provinces, where the Second Chambers was provided, the Congress had obtained a comfortable majority and was in a position to get its legislation passed by overwhelming majorities in the Assembly. We may also note that the Second Chambers were, except in Bengal, introduced in predominantly Hindu Provinces, where the Congress was sure to win. This gave cause to the British reactionary circles in England to provide citadels of reaction in those Provinces.

Composition of the Provincial Legislature : The following tables¹ show the composition of the Provincial Legislature under the Act of 1935 :

1. Palande : *Indian Administration* (9th Ed. 1943), pp. 323-24.

PROVINCIAL LEGISLATIVE COUNCILS

Province	Total of Seats	General Seats	Muslim Seats	European Seats	Indian Christian Seats	Seats to be filled by the Legis- lative Assembly	Seats to be filled by the Governor
Madras	Not less than 54 Not more than 56	35	7	1	3	...	Not less than 8 Not more than 10
Bombay	Not less than 29 Not more than 30	20	5	1	...	...	Not less than 3 Not more than 4
Bengal	Not less than 63 Not more than 65	10	17	3	...	27	Not less than 6 Not more than 8
United Provinces	Not less than 58 Not more than 60	34	17	1	...	...	Not less than 6 Not more than 8
Bihar	Not less than 29 Not more than 30	9	4	1	...	12	Not less than 3 Not more than 4
Assam	Not less than 21 Not more than 22	10	6	2	...	...	Not less than 3 Not more than 4

PROVINCIAL LEGISLATIVE ASSEMBLIES

MACHINERY OF PROVINCIAL AUTONOMY

209

Province	Total Seats	Total General Seats	General Seats reserved for Scheduled Castes	Seats for Backward Areas and Tribes	Sikhs	Muslims	Anglo-Indians	Europeans	Indian Christians	Commerce, Industry, Mining, Planting	Landholders	Universities	Labour	Seats for women				
														General	Sikh	Muslim	Anglo-Indian	Indian Christian
Madras	215	146	30	1	—	28	2	3	8	6	6	1	6	6	—	1	—	1
Bombay	175	114	15	1	—	29	2	3	3	7	2	1	7	5	—	1	—	—
Bengal	250	78	30	—	—	117	3	11	2	19	5	2	8	2	—	2	1	—
U. P.	228	140	20	—	—	64	1	2	2	3	6	1	3	4	—	2	—	—
Punjab	175	42	8	—	31	84	1	1	2	1	5	1	3	1	1	2	—	—
Bihar	152	86	15	7	—	39	1	2	1	4	4	1	3	3	—	1	—	—
C. P. and Berar	112	84	20	1	—	14	1	1	—	2	3	1	2	3	—	—	—	—
Assam	108	47	7	9	—	34	—	1	1	11	—	—	4	1	—	—	—	—
N.W.F. Province	50	9	—	—	3	36	—	—	—	—	2	—	—	—	—	—	—	—
Orissa	60	44	6	5	—	4	—	—	1	1	2	—	1	2	—	—	—	—
Sind	60	18	—	—	—	33	—	2	—	2	2	—	1	1	—	1	—	—

The number of members of the Legislative Councils varied from 21 in Assam to 65 in Bengal and that of the Legislative Assemblies from 50 in North-Western Frontier Province to 250 in Bengal. The tenure of a member of the Council was nine years and $\frac{1}{3}$ of its members were to retire after every 3 years. Thus the Council was a permanent body and its members enjoyed a long span of nine years. The tenure of the Assembly was five years. It was liable to be dissolved earlier by the Governor, in his discretion. The Governors of the Provinces were specially authorized, during the Second World War, to extend the life of the Assemblies because it was difficult to hold elections at that time. The Presiding Officers of the Assemblies were known as the Speaker and the Deputy Speaker and those of the Councils, the President and the Deputy President. Both the Houses enjoyed the time-honoured right of electing their Presiding Officers. These officers could be removed by their respective Houses, by an adverse vote of the majority of the members of the House concerned, after giving 14 days notice for such a move. The Provincial Legislatures were to meet, at least, once a year, but in practice the meetings were far more frequent. All the Ministers and the Advocate-General of the Province had the right to attend the meetings of both the Houses and to take part in debate. But a Minister enjoyed the right of vote only in the House of which he was the member. The Advocate-General had no right of vote because he was not a member of either House. No body could be a member of both the Houses at the same time. The Speaker of the Assembly and the President of the Council had the right of vote only when there was an equality of votes on either side.

Voting qualification and constituencies: The voting qualifications in the case of the Council varied from Province to Province. Mostly, the rich were voters for this body. Apart from these, certain upper classes of the society like Rai Bahadurs, ex-members of a Legislature; Executive Councillors, Ministers, members of the Senate of a University; High Court Judges; Presidents of Municipalities and Local Boards, Chairmen of Central Co-operative Banks, etc., were also voters. Thus we find that the Council was a body, representative of rich persons and upper classes of the society. Its constituencies were territorial-cum-communal. The voting qualifications in the case of the Assembly were considerably lowered as compared with the Act of 1919. The qualifications varied from Province to Province. The general basis of qualifications for a voter was literacy and the payment of a certain amount of income tax or land revenue or house rent or municipal or vehicle tax, etc. Women possessing similar qualifications were also entitled to vote. It has been estimated that about 14% of the total population of British India acquired the right of vote for Provincial Assemblies against 3 per cent of the population which enjoyed similar right, under the Act of 1919. The voters constituted about 27% of the adult population of

the British India. Their number was roughly 35 millions, including more than 6 million women. As for the constituencies, the whole of the Province was divided into territorial units. Seats were then allotted to various communities, classes and interests. The communal electorates were not only retained, but were further extended. New classes like women and labour were created. One cannot fail to see a tendency to split the nation in an ever-increasing number of warring camps.

POWERS OF THE PROVINCIAL LEGISLATURE

Legislative Powers : The Provincial Legislature had the power to make laws on the Provincial as well as the Concurrent List. Any law passed on the subject in the Concurrent List was invalid to the extent to which it conflicted with a similar law passed by the Central Legislature on the same subject. But if the law in question was passed with the previous consent of the Governor-General, it remained valid, even when it was in conflict with a Central law. Every law was required to be passed by both the Houses in Provinces, where there was also a Legislative Council.

There were many limitations on the legislative powers of the Provincial Legislature. The previous sanction of the Governor-General was required, which he gave in his discretion, for introducing any bill or amendment, which (a) repealed, or amended, or was repugnant to any provision of any Act of Parliament extending to British India ; or (b) repealed, amended, or was repugnant to any Governor-General's Act, or any Ordinance promulgated in his discretion by the Governor-General ; or (c) affected matters regarding which the Governor-General was required to act in his discretion ; or (d) affected the procedure for criminal Proceedings in which European British subjects were concerned. Apart from this, the legislative powers of the Provincial Legislature were much curtailed by the legislative powers of the Governor, which have already been described.¹ No bill could be introduced, without the previous sanction of the Governor, given in his discretion, which (a) repealed, or amended, or was repugnant to any Governor's Act or any Ordinance promulgated in his discretion by the Governor ; or (b) repealed, amended, or affected any Act relating to any Police force.

Executive Powers : Both the Houses enjoyed the usual powers of putting questions and supplementary questions to the Ministers. This enabled the members to have a peep into the inside of the administration and made them vigilant. Resolutions could be passed in both Houses, suggesting positive action for the Government. Adjournment motions could be moved, by

1. Please see pp. 202-3.

which the attention of the Government could be drawn to matters of urgent public importance. Apart from these powers, which were enjoyed by both the Houses, the Assembly was empowered to remove all the Ministers by passing a vote of no-confidence against them. This is why the Ministers were, virtually, appointed and removed by the Assembly. It was the most important power given to the Provincial Assembly by the Act of 1935. This made the Provincial Cabinet subservient to the will of the Assembly. It may be recalled that under the Act of 1919, some of the Ministers only were made removable by the Provincial Council. The indirect method of censuring the Ministers during voting on the budget by moving token cuts, or by reducing salaries, was no longer available because the salaries, once fixed, were treated as non-votable items. But the Ministers could be made to quit even during the budget time, by refusing to sanction a large part of the grants. The intention of the Act of 1935, however, was to encourage direct method of attack on a Minister or Ministers by means of a no-confidence motion. A Ministry could also be ousted by defeating some major piece of legislation introduced by it.

Financial Powers : Money Bills could originate only in the Lower House, i. e., the Legislative Assembly. The expenditure side of the budget contained two kinds of items—votable and non-votable. The non-votable items constituted the expenditure charged on the revenues of the Province. Under Section 78 (3) of the Act, the following items of expenditure in a Province were declared non-votable : (a) the salary and allowances of the Governor ; (b) debt charges ; (c) the salaries and allowances of Ministers, the Advocate-General and the Judges of the High Court ; (d) expenditure for Excluded Areas ; (e) sums required to satisfy any judgment, decree, or award of any court or tribunal ; (f) and any other expenditure declared by this Act or any Act of the Provincial Legislature to be so charged.

The items of expenditure, given above, were not subject to the vote of the Assembly or of the Council. But these could be discussed in both Houses, except the salaries and allowances of the Governor and other expenditure relating to his office. These items made about 30% of the total expenditure of a Province. The remaining items of expenditure, which were about 70%, were submitted to the vote of the Assembly. These were called demands for grants. It was specifically laid down in the Act that no demand for grant could be made, except on the recommendation of the Governor. Any such grant could be refused or reduced by the Assembly, but any such reduced or refused item could be restored by the Governor, if he considered such a course necessary for the due discharge of any of his special responsibilities. Thus, even in the case of votable items of the budget, the Governor had the power of nullifying a decision of the Provincial Legislature. The

voting of demands for grants was to be done only in the Assembly. The Council was not given the right of voting grants. No bill or amendment could be introduced or moved except on the recommendation of the Governor, if it made provision: (a) for imposing or increasing any tax, or (b) for regulating the borrowing of money, or (c) for declaring any expenditure as charged upon the revenues of the Province or for increasing the amount of such an expenditure.

Evaluation of the Provincial Legislature: Under the Act of 1935, the membership of the Legislature was considerably enlarged. The method of election was direct. In the Assemblies, all the members were elected. In the Councils, there was only an insignificant element of nominated non-officials. For the first time the Assembly was given the power to make and oust the entire Provincial Cabinet. There were no longer Departments outside its control as under Dyarchy, when the reserved subjects were excluded from the control of the Provincial Legislature. The voters were considerably increased by lowering franchise qualifications.

But we should not, at the same time, fail to note various limitations on its powers. The legislative powers of the Governor, ordinary as well as extraordinary, curtailed a good deal the legislative power of the Provincial Legislature. Its financial powers could be interfered with by the Governor. In cases, where a Governor acted in his discretion, or in his individual judgment, or in the discharge of a special responsibility and ignored the advice of the Ministers, the Provincial Legislature was helpless. The Police Department, the Superior Services and the administration of the Excluded and Partially-Excluded Areas were, somewhat, beyond the control of the Legislature. The Second Chambers were thrust on 6 out of 11 Provinces, with their long term and retrograde outlook and were citadels of reaction and vested interests. The method of election was defective. The country was divided into communities, classes and interests. The warring camps were increased. The venom of communal and separate electorates was not only retained but increased, by creating new classes and communities. About 73 per cent of the adult population did not enjoy the right of vote for electing members to the Assembly. Thus legally speaking, the powers of the Provincial Legislature were very restricted and limited indeed. *These were in fact some of the limitations from which Provincial Autonomy suffered under the Act of 1935.*

CHAPTER XXII

NATURE AND WORKING OF PROVINCIAL AUTONOMY

The idea of Provincial Autonomy was first mooted in a despatch of Lord Hardinge in 1911 and was developed in the Montford Reforms of 1919. It took its regular shape in the recommendations of the Simon Commission. At the First Round Table Conference, the British Government as well as the Indian representatives accepted the principle of Provincial Autonomy as the basis of the future reforms and the idea was developed into a full-fledged system of government in the Act of 1935. In its ordinary meaning, Provincial Autonomy connotes two things; firstly, it means that the Provincial Government is in the hands of responsible Ministers, i.e., a set of persons, who are removable by the elected representatives of the people of the Province; and secondly, it means that there is no interference and control from higher authorities like the Central Government, at least, in as far as the Provincial subjects are concerned.

Change in the intentions of the British Government : There was a change in the intentions of the British Government regarding the implications of Provincial Autonomy during the period intervening the First Round Table Conference and the Joint Parliamentary Committee Report. At the time of the First Round Table Conference, Mr. Ramsay Macdonald, the Prime Minister of England at the time, said, "Governors' Provinces will be constituted on the basis of full responsibility and Ministers will be responsible to the Legislature jointly." There was a clear going back from this position later on. In the Joint Parliamentary Committee Report, it was stated that "each Province will possess *Executive and Legislature* having an exclusive authority in the Province." The difference between the two statements may be clearly noted. In the earlier statement, power was to be vested in the Legislature on the basis of full responsibility of the Ministers; later on, it was said that power in the Provinces was to be jointly possessed by the *Executive* and the Legislature. Sir Samuel Hoare, the then Secretary of State, talked repeatedly about the two sides of the administration in the Provinces in his evidence before the Joint Parliamentary Committee. What he meant was that in the Provinces, power would be placed in two sets of hands—responsible Ministers and the Governor. Provincial Autonomy, as introduced on April 1, 1937 was intended to be no better.

Election results in Provinces : Before the inauguration of the Act of 1935, elections were held all over India. The Congress contested the elections in all seriousness. It obtained clear majorities in Madras, Bihar, U. P., Orissa, Bombay and C. P. In Bengal, Assam and N.W.F. Province, it was the largest single Party. Only in the Punjab and Sind, it could be ignored. Thus the election results were a tremendous success for the Congress. Immediately after the elections, the question arose whether the Congress should accept offices or not. It was decided, eventually, on the initiative of Mahatma Gandhi that if the Governors gave the Chief Ministers in the Congress Provinces an assurance that they would not use their numerous powers in the day-to-day administration of their respective Provinces, Offices should be accepted. As no such assurance was forthcoming, a stalemate started. Interim Ministries were formed in the Congress Provinces. In the remaining five Provinces, Coalition Ministries started functioning.

Interim Ministries : The formation of Interim Ministries in the Congress Provinces was considered unconstitutional by the nationalist leaders. The Secretary of State defended the novel experiment on the ground that such Ministries had many times been formed in England and it was provided in the Act that there should be a Council of Ministers to assist the Governor. But the Governors were also expected, under the Instrument of Instructions, to see that the Ministries commanded a majority in the Legislature. The analogy with England was wrong because such Ministries in England held offices always according to the wishes of the House of Commons. The action of the Governors in keeping those puppet Ministers installed for some months was vehemently condemned by the progressive opinion in India.

Assurance Controversy : During this period a full-throated discussion went on everywhere about the Assurance demanded by the Congress. Statements and counter-statements were issued. Even Sir Tej Bahadur Sapru, the veteran Liberal leader, came out with the statement that the Governors could not give any such Assurance because that was clearly against the provisions of the Act of 1935. Mahatma Gandhi was equally emphatic that such an Assurance was possible, and was the least the British Government should do, to show their sincerity about their professions about Provincial Autonomy. He believed that without such an Assurance Provincial Autonomy would never work. Better sense prevailed at the end. Although a clear Assurance was not given, its substance was conceded in a historic statement made by the Governor-General with the approval of the Secretary of State. In that statement, it was said that the Governors were not expected to interfere in the day-to-day administration of the Provinces and that the special responsibilities of the Governors were in the nature of extraordinary powers and were not intended to be used as obstacles in the way of

the popular Ministries. (The Congress regarded the statement satisfactory, though not fully satisfying. The Interim Ministries resigned and the Congress formed Governments in six Provinces in July, 1937. Very soon, N. W. F. Province also came under a Congress Ministry. In Assam, the Sadullah Ministry was defeated on an important Bill and resigned. This brought forth a Congress-coalition-Ministry in Assam as well. Thus, when Provincial Autonomy started functioning regularly, there were eight effective Congress Governments. The Muslim League was strong in Sind. Bengal witnessed the Parties equally balanced and the Punjab was under the Unionists, which was a Party composed of Muslims, Hindus and Sikhs.

The Coalition Ministries and the Muslim League : When the Congress Party, after the Assurance Controversy, was about to assume offices in the Hindu-majority Provinces, the question arose regarding the advisability of the Congress entering into coalitions with the Muslim League in these Provinces. Mr. M. A. Jinnah, publicly expressed willingness of the Muslim League to join such coalitions. Negotiations started between the U. P. Provincial Congress and the U. P. branch of the Muslim League to arrive at some basis for such coalitions. But no understanding could be arrived at. The Congress was not willing to enter into any such coalition, unless the Muslim League Group in the Legislature stopped functioning as a separate Group and unless the members of the Muslim League Party in the Legislature became subject to the discipline and control of the Congress. It was further required by the Congress that the Muslim League Parliamentary Board in U. P. should be dissolved and no candidate should thereafter be put up by the said Board at any subsequent bye-election. This implied a virtual dismemberment of the Muslim League Party in U. P., which was naturally not acceptable to the League. As these negotiations in U. P., on both sides, were conducted under the instructions of the respective High Commands of the Parties, there was no further talk on such coalitions, anywhere else.

The Congress was criticized in some quarters for not entering into coalitions with the Muslim League on reasonable terms. The action of the Congress was, no doubt, constitutionally justifiable. With absolute majorities at its back in the Assemblies, the Congress did not feel compelled to enter into such coalitions. Moreover, the Congress thought that no harmonious work would be possible with the Muslim League Ministers, who possessed basically conflicting views on almost all economic and political issues facing the country. But, probably, the most important reason why the Congress rejected the offer of coalitions by the Muslim League was that the Muslim League had not yet established its right to speak as the sole representative of the Musalmans of India, as it did after 1945-46 elections. The Muslim League was not much of a success in 1937 elections and a compromise with it in 1937 was not a compromise with the major portion of the Musalmans of India.

The cry of Hindu tyranny : Mr Jinnah, however, made a capital out of this episode. He dubbed the Congress as 'drunk with power'. He was quick to point out to the Muslims, "On the very threshold of what little power and responsibility is given, the majority community has clearly shown that Hindustan is for the Hindus." It is, often, said that this step of the Congress was the most decisive factor in making the Muslim League fix Pakistan as its goal. Hardly eight months after the Congress Ministries had come into power, Mr. Jinnah began to level charges of atrocities and suppression of the Muslims, against the Congress Ministries. In March, 1938, the Muslim League appointed a Committee to report on the so-called numerous complaints of oppression and ill-treatment of the Muslims in the Congress Provinces. In the Report, a long list of sufferings of the Musalmans at the hands of the Congress Ministries was published. The Congress, vehemently, repudiated those charges. Dr. Rajendra Prasad, who was the Congress President at the time, invited Jinnah to place all those charges before the Chief Justice of the Federal Court for investigation. But Jinnah declined the offer. Sir Harry Haig, who was the Governor of U.P. at the time, testified in 1939 that "in dealing with communal issues, the Ministers had normally acted with impartiality and a desire to do what was fair". Prof. Coupland, who came along with Cripps and was in no sense a friend of the Congress, observed, "They (instances of injustice to the Muslims at the hands of Congress Ministries published in the Report) were not very numerous, considering the vast areas concerned. Many of them were of a relatively trivial character, and similar incidents had been occurring from time to time for many years past." In spite of these rebuttals, Mr. Jinnah and the Muslim League continued to publicize those charges to the ignorant Muslim masses and were successful in creating in them a considerable anti-Hindu feeling, thus preparing the Muslim masses to accept the gospel of Pakistan as the only way of deliverance from the so-called tyranny of the Hindu majority.

Role played by Governors during the working of Provincial Autonomy : The innumerable powers given to the Governors were clearly inconsistent with the spirit of Provincial Autonomy. Autonomy of the Governor and Provincial Autonomy could not go hand in hand. As a result of the Assurance Controversy, it was an implied condition of the acceptance of office by the Congress that Ministers would be free to resign, whenever they considered the interference on the part of the Governor, unjustified. In N.W.F. Province, the Governor refused to give assent to a bill passed by the Legislature. In Central Provinces, during the Khare Controversy, the Governor used discretionary powers and dismissed the Ministry. Such actions of the Governors were resented, but no crisis developed. The Congress took these actions of the Governors as pin-pricks and remained undisturbed. But very soon things headed towards a clash. In Bihar and U. P. the Governments took up the question of the release of political prisoners. The Governors of those Provinces

opposed the move on the basis of their special responsibilities. They contacted the Governor-General, who advised recourse to Section 126 of the Government of India Act, 1935. The releases were refused on the ground that peace and tranquillity in the whole of India would be disturbed thereby. Evidently, the Governor-General had also sounded the Governors of the remaining Provinces some of whom objected to the move and feared that the releases would have repercussions in their Provinces as well. As a protest against the interference of the Governors the Congress Ministries in Bihar and U. P. resigned, making it a question of confidence in the Ministry. This was done after full consultation with the Congress High Command.

The Central Part of the Act of 1935 was already dead. The British Government could not like to see its Provincial Part also going the same way. Negotiations between the two sides started on the initiative of mutual friends. As a result, the political prisoners were allowed to be released. To save the face or prestige of the Government, it was declared that the releases would be made gradually and that the merits of each individual case would be examined. This crisis resulted in giving a very wholesome turn to the working of Provincial Autonomy, at least, in the Congress Provinces.

The episode divided the Provinces on the basis of two types of Ministries. Firstly, there were the Congress Ministries, who were allowed a good deal of Autonomy in practice in the Provincial administration. The position of the Governors in these Provinces was reduced, very nearly, to that of the constitutional heads till the beginning of the Second World War. In other than the Congress Provinces, the Governors continued to exercise their innumerable powers, whenever they liked, and often interfered in the work of the Ministries. As an example, the Punjab Governor, when sounded by the Governor-General regarding the release of the political prisoners in Bihar and U. P., wrote back that peace and tranquillity in the Punjab would be disturbed by that action, without even caring to consult the Chief Minister of the Punjab. When the information about the advice, sent by the Punjab Governor in this matter, became public, Sir Sikander Hayat Khan, the Chief Minister of the Punjab, was heckled in the Punjab Assembly and was asked as to how he had felt that peace and tranquillity in the Punjab would be disturbed because of such releases in other Provinces. He denied to have advised the Governor on this matter at all. The Governor of the Punjab had, evidently, written to the Governor-General without even consulting the Chief Minister. Such interferences were out of question in the Congress Provinces.

According to Section 93 of the Government of India Act, 1935, the Governor could declare a breakdown of Provincial Autonomy in a Province after getting the approval of the Governor-General.

This Section was applied in all the Congress Provinces in 1939, when the Congress Ministries resigned on account of their differences with the British Government on the issue of the prosecution of the War and the participation of India in it. After declaring the breakdown of the constitutional machinery under Section 93, the Governors started administering these Provinces with the help of the Advisers. The working of Provincial Autonomy throughout India assumed, more or less, one direction. Allah Buksh, the Chief Minister of Sind, was dismissed by the Governor even at a time, when he was the undisputed leader of the majority party in the Assembly because he surrendered his title of Khan Bahadur on the ground that the British Government, during the war, was not conducting itself in the best interest of Indians. In Sind, Bengal and N.W.F. Province, the Governor betrayed pro-Muslim League leanings and kept up the League Ministries in office, even though these were not enjoying the confidence of the majority of the total members of their respective Assemblies. This was made possible by keeping most of the Congress members of the Legislative Assemblies in these Provinces in jail under the Defence of India Rules. Mr. Shyama Prasad Mukerjee, the Bengal leader, once openly stated that the right place of the Bengal Governor was on the Muslim League benches.

Sir Roger Lumby, the Governor of Bombay, describing the real role of the Governor under Provincial Autonomy, said, "The Governors must preserve the spirit in which the Constitution was conceived, which was the spirit of self-government. He must be equipped to discharge the special functions laid on him, but without, as far as he can make it possible, disturbing that spirit. He has his own contributions to make if he can, to the success of the Government and he must remain impartial, a neutral in politics, not a protagonist." It may be said that the Governors in the Congress Provinces, till the beginning of the War, did work in that spirit. When Mahatma Gandhi said that "the Governors on the whole played their part" under Provincial Autonomy, he was evidently referring to the role played by Governors in the Congress Provinces, till 1939.

Working of the Ministries : As a matter of convention, in every Province, the leader of the majority party in the Legislative Assembly was called upon by the Governor to form the Ministry. Everywhere the Ministry remained in office as long as it enjoyed the confidence of a majority of the members of the Assembly. In all the Provinces, again as a matter of convention, the Ministers worked on the principle of collective responsibility. This gave the Ministries strength and stability. The collective working would have probably been impossible, if the Congress had formed coalitions with the Muslim League. The Assam Ministry established a wholesome convention that the Government should resign when it is not successful in getting an important piece of legislation passed by the Legislature and should not thereafter

insist on a regular vote of no-confidence. In all the Provinces, the Chief Ministers included members of the minority communities in their Cabinets, except in Orissa, where no Mohammeden could be included in the Congress Ministry because there was no Muslim Congressman of eminence in that Province. A good deal of agitation was started in Orissa by Muslims on that ground. They waited on the Governor of the Province to point out the omission. The Governor refused to interfere and assured the deputation that the interests of the Muslim community in that Province would not suffer because of the non-inclusion of a Muslim.

Under the Act of 1935, the Governor was to preside over the Ministry, in his discretion. In all the Provinces, the Governors continued to preside over the meetings of the Ministries, which was clearly against the spirit of Provincial Autonomy and the practice of parliamentary governments. In the Congress Provinces, this was especially resented and resulted in forcing the Congress Ministries to take important decisions in informal meetings, thus eliminating the Governor. Routine matters and cases of secondary importance formed the subject matter of formal Cabinet meetings, where the Governors presided. In other than Congress Provinces, the Governors continued to preside and take vital part in the deliberations of the Cabinets. The presence of the Governor in the Cabinet meetings was even publicly welcomed in some quarters. Sir Sikandar Hayat Khan, the Chief Minister of the Punjab, once openly expressed the idea that the presence of the Punjab Governor in the Cabinet meetings was very helpful because of his mature administrative experience.

The portfolios were distributed among the Ministers by their respective Chief Ministers in every Province as a matter of convention, although this power belonged to the Governors. Thus many healthy conventions were observed in the formation and working of the Ministries.

Parliamentary Secretaries : On the model of England, a Parliamentary Secretary was usually appointed under every Minister. These persons were, invariably, appointed from the members of the Legislature. Their duty was to assist the Ministers in the parliamentary work. They were like junior Ministers. These were treated as party jobs. The Parliamentary Secretaries changed with the change of the Party in power. The position of a Parliamentary Secretary should not be confused with that of the Permanent Secretary of the Department, who is the administrative head of the Department and belongs to the Public Services. The Government of India Act, 1935 was silent over the need for such appointments. This was also a healthy convention. It gave bright youngmen of the Party training in public administration and enabled Ministerial posts to be filled in easily in future, relieved the Ministers from routine work and assisted them in thrashing out the problems facing the Department.

Part played by Services : Under the Act of 1935, the Services were granted various safeguards, which were rather inconsistent with the spirit of Provincial Autonomy. The Superior Services working under the Ministers were beyond the control of the Ministers. Their appointment, conditions of service, etc. were all under the control of the Secretary of State-in-Council. When the Act of 1935 was on the anvil, the Superior Services insisted on some additional safeguards because they were afraid that, with the introduction of Provincial Autonomy, they might not be able to work comfortably under the Congress Ministers. The British Government conceded those additional safeguards because the Superior Services constituted the backbone of the British Rule in India. When Provincial Autonomy started functioning, many members of the Superior Services resigned, knowing that they would not be able to work under the national leaders, some of whom they had often mal-treated under the previous regime ; others decided to give full co-operation to the popular Ministers in the true spirit of a civil servant. There was yet another type, who continued service in India in order to create trouble for the popular Ministers, hoping that the new experiment would not last long.

A show-down was inevitable with the last-mentioned class, in order to bring it into a proper frame of mind. This was achieved in United Provinces. When the popular Ministry assumed power, the Chief Secretary of the Province issued a circular to the administrative officers under him that no order should be executed by them, unless and until it was countersigned by one of the Secretaries. When the circular came to the notice of Mr. G.B. Pant, the Chief Minister of the Province, he naturally objected to it and called for the explanation of the Chief Secretary. The Chief Minister regarded the explanation furnished by the Chief Secretary as unsatisfactory, and declared that the circular was an act of either "insubordination or incompetency." As a result of this, the circular was withdrawn and the whole episode left a well-needed lesson for the entire body of Services, not only in U. P., but throughout India. Thereafter the Services realised their real position in the Congress Provinces and began to perform their constitutional role. Thus, on the whole, the Services acquitted themselves well during the period of Provincial Autonomy. They obeyed the Ministers in matters of policy and satisfied themselves with the execution of those policies.

The Congress Ministers were often blamed for interfering too much in the detailed working of the Departments, even in matters which should ordinarily have been left to the Services. A Minister should not interfere in administrative details. Here Congress Ministers were sometimes at fault. There were often complaints of interference in the work of the Services, even by the Congress members of the Legislature.

Achievements of Ministries : Almost all the Ministeries busied themselves with vigorous constructive work. In the Congress

Provinces, questions like elementary education, prohibition, tenancy laws, agricultural indebtedness, rural development, industrial wages and disputes, cottage industries and improvement in the conditions of backward and depressed classes, were tackled with promptness and energy. Some examples may also be cited to show the tempo of the courageous work done by the Congress Ministries. In 1938, the Bombay Ministry, with full support of the Legislature, restored to their original owners all lands that were confiscated by the previous autocratic administration as a penalty for participation in the civil disobedience movements. At about the same time, the Madras Assembly ordered the removal of the statue of the notorious General Neil from its prominent public situation in Madras. Political prisoners were released in every Congress Province. Most of this work was left unfinished in the Congress Provinces in 1939. Threads were resumed in 1945, when the Second World War ended and popular Ministries came into office once again. While reviewing the work of the Congress Governments from 1937 to 1939, Prof. Coupland testifies, "The Congress Ministries—proved themselves capable and hardworking men with a high sense of public duty and responsibility...The legislatures were well-conducted, hard-working, and, except for an increasing tendency to ask unnecessary questions, business like"¹.....On October 17, 1939, Lord Linlithgow said, "Whatever the political party in power in those Provinces, all can look with satisfaction on a distinguished record of public achievement during the last two-and-a-half years." The Ministries, in other than the Congress Provinces, wisely followed the good example of the Congress Ministries with regard to constructive work. Prof. Coupland pays an unconscious compliment to the Congress, when he says. "The legislative programme of the non-Congress Ministries has followed the same main lines as that of the Congress Ministries."²

The beneficial results of the working of Provincial Autonomy were many. It proved the capacity of our national leaders for doing constructive work. It proved our aptitude for a parliamentary form of Government. Many of our leaders learnt the technique of public administration. It brought the Congress nearer to the masses. The Ministerial work done created confidence and courage in the leaders. The acceptance of offices by the Congress proved that the lure of office left the main body of Congressmen unspoiled. In short, the working of Provincial Autonomy advanced the cause of nationalism in India. It increased our eagerness to be free and proved our capacity to govern ourselves. From the working of Provincial Autonomy, Prof. Coupland concludes, "The Congress had at last become a constructive force in Indian politics...Now it had shown that the power of its first organization and the disciplined enthusiasm of its members could be put to a more practical use."³

1. Prof. Coupland : *The Constitutional Problem of India*, Part II, p. 155.

2. *Ibid.* p. 82.

3. *Ibid.* p. 157.

PART IV

BIRTH PANGS OF FREEDOM



CHAPTER XXIII

WORLD WAR II AND THE CONSTITUTIONAL DEADLOCK

The clouds of War began hovering over Europe in the early months of 1939. The Congress feared that India would be dragged into the War and her resources would be exploited for Imperialistic purposes. A few months before the actual outbreak of the War, the Congress warned the British Government that they would "oppose all attempts to impose a war on India and use Indian resources in a war without the consent of the Indian people." In spite of this warning, Indian troops were sent to Egypt, Aden and Singapore in August, 1939. The Congress expressed its resentment by calling upon all the Congress members of the Central Legislative Assembly not to attend the next session as a protest against this action of the Government. Time and again, the Congress had made it clear that, while it was opposed to Nazism, Fascism and all other forms of totalitarianism, it was equally opposed to giving any help in a war which was intended to consolidate and further the interests of the British Imperialism.

The World War II and the Congress attitude : Germany invaded Poland on September 1, 1939. England declared war against Germany on September 3, on the usual ground that they had done so to make the world safe for democracy. It was declared that this War was to root out exploitation of one nation by another and to uphold the right of all nations to self-determination. The Congress Working Committee met on September 14, and asked the British Government "to declare in unequivocal terms what their war aims are in regard to democracy and imperialism and the new order that is envisaged ; in particular, how these aims are going to apply to India and to be given effect to in the present." The Congress sympathised with Poland, but at the same time expressed its utter inability to do anything positive in view of India's own subjugation. Unfortunately, no clear declaration of the War aims with regard to India was made by the British Government. The issue was evaded. India was declared a belligerent country, on the very day the War was started against Germany. An

Amending Act was passed by the British Parliament, giving wide emergency powers to the British bureaucracy in India. On October 10, 1939, the All-India Congress Committee met and asked the British Government to declare categorically that India would be made free after the War and that she would be given immediate control over Indian affairs to the largest possible extent. It was stated that such a declaration was absolutely essential to make Indians enthusiastic about the War and to enable them to render help whole-heartedly. The British Government, unfortunately, had no mind to give any such assurance.

Viceroy's Statement : Lord Linlithgow started a series of interviews with leaders of all shades of public opinion in India. After the interviews, the Governor-General declared that there were great differences of opinions amongst the persons interviewed with regard to the future set-up of India and the nature of immediate control asked for. The Government, in fact, fell back on the old policy of divide and rule. It was impossible to expect agreement, amongst the heterogeneous lot called for interviews. Lord Linlithgow however declared that the Dominion Status was the goal of India. It was further stated that at the end of the War, His Majesty's Government would be willing to undertake 'modification' of the Act of 1935, after consultation 'with representatives of the several communities, parties and interests in India and with the Indian Princes'. With regard to the demand for immediate transfer of control to Indian hands, the Viceroy said that he was willing to set up a "consultative group" of representative Indians immediately, to be associated with him in an advisory capacity in order to discuss the conduct of the War.

This declaration of the Governor-General fell far short of the Congress demand. In reply to the demand for Independence after the War, there was only a promise of the Dominion Status as a distant goal. In reply to the demand for immediate transfer of control to Indian hands, there was offered the right to be present in an advisory body, whose wishes the Governor-General could ignore at will. There was, thus, a wide-gulf between what was demanded by the Congress and what the Government was prepared to concede.

Resignations of the Congress Ministers : As a result of the frustration caused by the Viceroy's statement of October 18, 1939, the Working Committee of the Congress met on October 22, and called upon the Provincial Ministers to resign after adopting a resolution in the Provincial Legislatures on the War aims and condemning the way in which the Government was treating the sentiments of Indians. Under these circumstances, the Congress found it difficult to shoulder responsibility for the Provincial Administrations during the War. Ministries in eight Provinces resigned in obedience to this mandate of the Congress High Command. In all these Provinces, the Governors declared

the breakdown of the Constitution under Section 93 of the Government of India Act, 1935, dissolved the Legislatures and took the entire Provincial administrations in their own hands. Thus even the semblance of democracy was scrapped and autocratic rule started functioning in these Provinces.

Change in the attitude of the Congress : At this stage, it should be remembered that the attitude of the Congress in the World War II was in marked contrast to its behaviour during the War of 1914-18. It had then given unconditional help and had trusted the British Government, even in spite of the warnings of men like Tilak. At the end of War, all national leaders including Mahatma Gandhi were disillusioned by the attitude of the Government. So India decided not to be fooled again into co-operation in this War. The promise of Independence after the War and an effective control over the Indian administration during its pendency were declared as conditions precedent to any voluntary help in the War efforts.

Jinnah exploits the situation : After the Congress Ministries had resigned, Mr. M. A. Jinnah called upon the Muslims of India to observe December 22 as a "Day of Deliverance", "as a mark of relief that the Congress regime has at last ceased to function". In reply, Babu Rajendra Prasad offered to get the charges of atrocities over the Muslims by the Congress Ministries investigated by Sir Maurice Gwyer, the Chief Justice of the Federal Court. But Mr. Jinnah turned down the offer. The British officers in India once again, began to exploit the communal problem. The Muslim League played power politics. In March, 1940, it came out with its demand for Pakistan and expounded the Two-Nation Theory.

Congress offers help again : By the middle of 1940, the War had taken a bad turn for the Allies. German successes were phenomenal. Denmark, Holland and Belgium had fallen. Norway was invaded and a good deal of its territory was annexed by Germany. France collapsed completely. Britain herself was in danger. Her forces had collapsed at Dunkirk and she was day and night being subjected to devastating air attacks. The Congress was prepared to extend its helping hand to Britain, but on some honourable basis. On June 1, 1940, Mahatma Gandhi declared, "We do not seek our Independence out of Britain's ruin." The Congress Working Committee met at Poona on July 7, 1940 and offered to "throw its full weight into the efforts for the effective organization of the defence of the country and whole-hearted co-operation in men and money". The use of *violence* for the defence of the country in the time of War was thus clearly accepted by the Congress. This implied in a way, a departure from the policy of non-violence and was therefore against the cherished convictions of Mahatma Gandhi. But the Congress was led to this decision because of the hard realities of the War, in which non-violence and moral appeal

seemed to be of no avail, against an organized orgy of violence. This offer was made, however, subject to two conditions; firstly, that India's right to self-government after the War should be recognized in clear terms, and secondly, that a Provincial Government should be set up forthwith at the Centre, which should contain representatives of the main Political Parties in the country. The Provincial Government should be made responsible to the elected members of the Legislative Assembly of India. The terms regarding the immediate arrangement were, thus, made clear and precise by the Congress. It involved no toning down of the powers of the Governor-General or the Commander-in-Chief. All that the Congress had asked for was a sort of a Coalition Cabinet, responsible to the elected members of the Popular House. But as the later events proved, the Government was not at all willing to entrust any real power to Indians during the War.

as book
to go
Churchill comes into power : In the meantime, there occurred a ministerial crisis in England. Chamberlain, the Premier had bungled at Munich in his negotiations with Hitler. He was accused of a weak and dangerous policy of appeasement. Moreover, the Opposition Parties were not willing to go on lending their co-operation under such a weak leadership of the Conservative Party. Churchill replaced Chamberlain as Premier. Amery took over from Lord Zetland as Secretary of State for India. This change meant still more hardening in the attitude of the British Government toward the progressive aspirations of India. Churchill bluntly stated that the Atlantic Charter did not apply to India or Burma and was meant only for the European nations. In the Charter, it was stated that the Allies undertook to restore self-government to all the countries, which were victims of foreign aggression and alien rule. Churchill strongly reacted against the idea of relaxing or giving up control over the British dependencies or possessions and said, "He had not become His Majesty's first Minister to preside over the liquidation of the British Empire."

3
03
6 Aug, 1940
offer
The August, 1940 offer : In reply to the Poona Resolution of the Congress Working Committee, the Governor-General issued a statement with a view to ending the political deadlock. In the first place, Dominion Status was, once again, declared to be the goal for India. But to give it effect, it was stated that His Majesty's Government "will most readily assent to the setting up, after the conclusion of the War, with the least possible delay, of a body representative of the principal elements in India's national life, in order to devise the frame-work of the new constitution and they will lend every aid in their power to hasten decisions on all relevant matters to the utmost degree." Secondly, "a certain number of representative Indians were to be invited to join the Governor-General's Executive Council; and a War Advisory Council was to be established, "which would meet at regular intervals and which would contain representatives of the Indian States and of other

interests in the national life of India as a whole." Thirdly, it was made clear "that His Majesty's Government could not contemplate the transfer of their present responsibilities for the peace and welfare of India to any system of Government whose authority is directly denied by large and powerful elements in India's national life. Nor could they be parties to the coercion of such elements into submission to such a government." This was a curt answer to the demand of the Congress, which was told that, in the absence of an agreement with the Muslim League, no power could be transferred to the Indians.

Congress rejects offer : The offer was undoubtedly a clear advance on all the positions previously taken up by the Government. The promise of Dominion Status after the War was now made. The demand of the Congress for the appointment of a Constituent Assembly to frame the Indian Constitution was almost accepted, although some Indians considered it as only an offer of a Round Table Conference at the end of the War. These were the redeeming features. Yet the offer was rejected by the Congress because it fell far short of its expectation regarding the immediate changes and placed a veto in the hands of the Minorities against further constitutional advancement in India. Seats on the Executive Council were not acceptable to the Congress because it implied no real power or control. The most unfortunate part of the Declaration, however, was the attempt to bolster up the claim of the Minorities and to pitch them against the Congress. The Minorities, and especially the Muslim League were assured that no constitutional scheme would be acceptable to the Government, unless and until the same was agreed to by the Muslim League. This was clearly an undemocratic proposition. It was putting the majority at the mercy of the minority.

Individual Civil Disobedience : The offer of the Government came as a great disappointment to leaders like Jawahar Lal Nehru and C. Rajagopalachari, who wanted to offer active association in the War. As a result, Mahatma Gandhi was, once again, authorized by the Congress to start Civil Disobedience. But in view of the critical War situation, the Congress, and especially Mahatma Gandhi, did not like to do anything which might lead to an upheaval or disorder. Nor could it keep quiet at the rejection of its demands by the Government. In November, 1940, was, therefore, started the Individual Satyagraha, which implied a symbolic protest against the attitude of the Government. Mahatma Gandhi himself selected individuals, who were to offer Satyagraha and court imprisonment. Vinoba Bhave was given the signal honour of being selected as the first individual Satyagrahi. The men so selected were to give a notice to the District authorities, stating their intention to ask the people not to help in the War efforts. Vinoba Bhave was allowed to address a public meeting against the War efforts for a few minutes and was then imprisoned. With regard to

others, the Government usually took the man into custody on receipt of the notice. It is estimated that about 25,000 persons courted imprisonment in this movement. Almost all the top-ranking leaders of the Congress, including the Congress members of the Legislatures, went to jail.

The movement was rigidly controlled and it was not allowed to take the shape of a mass action. There was not a single case of violence by a Congress worker or a *Satyagrahi*. The movement was a simple protest against the way, the War was being waged on behalf of India. It was to vindicate the right of freedom of speech and expression. The movement, however, did embarrass the Government. Public resentment against the Government grew as a result of the movement. The national press made full use of its propaganda value. It kept the Government uneasy and its attention remained diverted. Sir Sikandar Hayat Khan declared that Mahatma Gandhi was "stabbing Britain in the back." This was rather a harsh judgment. Gandhiji invented this novel form of *Satyagraha* to give the minimum possible offence to the authorities and yet to keep the torch of nationalism burning.

Expansion of the Viceroy's Executive Council : While the Individual Civil Disobedience movement was going on, the Governor-General expanded his Executive Council and instituted at the end of October, 1941 the War Advisory Council in terms of the August Declaration. This meant ignoring the Congress, which had rejected the August offer in the clearest terms. Five more Indians were appointed on the Executive Council. This raised its total membership to thirteen, out of which now eight were Indians. Neither the Congress nor the Muslim League was willing to send any member to the Council. The Government picked up 'yes-men' for the positions to show to the outside world that India was henceforth to be governed by an Executive Council representing a majority of Indians.

No body misunderstood the real character of these Councillors. They had little power. They were subject to the over-riding powers of the Governor-General. As they owed their appointment to the Governor-General alone, they could not possibly go against the wishes of the Governor-General. They were not responsible to the Legislative Assembly and hence were not amenable to the popular opinion. The Foreign Affairs and the Political Departments remained under the Governor-General. The Defence remained with the Commander-in-Chief. Two other vital Departments of the Government, i. e., Home and Finance, also remained in the hands of the European members. The other Governments were split up into nine splinter Departments, out of these eight were placed under the Indian Members. It is significant to note that no Department of real importance was entrusted to the Indians. Most of the newly created Departments were to serve

the needs of the Defence, which was the chief concern of the Government.

Suspension of the Individual Civil Disobedience : About a month after the expansion of the Executive Council, almost all the *Satyagrahis* were released by the Government. This might have been done to win a certain amount of popularity for the newly appointed Indian Members, who were criticised for having accepted offices, which the popular Parties had refused. The release of the *Satyagrahis* might have been due to the worsening of the War situation for the Allies. Germany had declared War on Russia and now threatened to attack her. Japan was on the verge of joining the War, which meant a threat to the whole of the Far East. Mahatma Gandhi was not impressed by these releases. He could see no change in the attitude of the Government. He was, therefore, in favour of continuing the *Satyagraha*. The matter was, however, left for the decision of the All-India Congress Committee.

On December 7, 1941, Japan entered the War against the Allies. India was now in an immediate danger. It was under these circumstances that the Congress Working Committee again met. It was no longer safe to depend upon the British Government for the defence of India. The Working Committee felt a great concern over the safety of India and decided to suspend the Individual *Satyagraha*. Mahatma Gandhi was relieved of the leadership of the Congress at Bardoli on the 30th December, 1941 and it was decided to organise the country for an effective defence. The Congressmen were advised to stick to their posts and to concentrate on allaying panic among the people, who had been gripped by fear of an invasion by Japan.

CHAPTER XXIV

CRIPPS PROPOSALS

On March 22, 1942, Sir Stafford Cripps arrived in India with fresh proposals to resolve the Indian political deadlock. Sir Cripps had just returned from Moscow after bringing Russia into the War on the side of the Allies. On his return from Russia, he was taken on the War Cabinet of England. He had already visited India twice. Some of the top-ranking leaders of the Indian National Congress, like Mr. Jawahar Lal Nehru, were known to be his personal friends. Cripps being a distinguished socialist leader, India was happy that he was singled out for the negotiations.

Causes which led to the Proposals : The following are some of the causes which led the British Government to make fresh proposals to solve the Indian constitutional tangle.

In the first place, Japan had just entered the War and her initial successes had alarmed the Allies. Philippines, Indonesia, Indo-China and Malaya were completely over run. Singapore had fallen. Burma was on the point of an immediate collapse. India was also open to the danger of an attack by Japan. The British Government was hardly in a position to defend India successfully. Churchill admitted the same in the House of Commons. The Indian National Congress had irrevocably taken up the position that no help was to be given in the War efforts except on a voluntary basis. This constitutional deadlock hampered the War efforts. The British Government wanted to end this deadlock. Secondly, in February, 1942, George Marshall and Madame Chiang Kai Shek visited India. They realised the importance of India in combatting Japan in the Eastern Zone. They also felt that only a willing India could do that effectively. In their farewell address, on the eve of their departure, they appealed to the British Government to do something towards meeting the national demand of India. Thirdly, even among the Allies of Britain, a feeling was growing that the British Imperialistic interests were the main hurdle, which dissuaded Britain from making an honourable offer to India. On February, 1942, President Roosevelt stated categorically that the Atlantic Charter was applicable to the whole world. This contradicted Churchill who had said that it did not apply to India and Burma. Roosevelt was also known to have taken up the issue of self-government for India in his discussions with Churchill. There was sympathy with the Indian cause even in Australia. Mr. Evatt, the Foreign Secretary, had declared in the Australian Parliament that self-government should

be conceded to India to enable her to participate in the War efforts effectively.

Terms of Cripps Proposals : It was stated that the object of the British Government was the earliest possible realisation of self-government for India. To realise this end, the Government contemplated "the creation of a new Indian Union which shall constitute a Dominion associated with the United Kingdom and other Dominions by a common allegiance to the Crown, but equal to them in every respect, in no way subordinate in any aspect of its domestic and external affairs." It was promised that "immediately upon cessation of hostilities, steps shall be taken in India to set up a Constitution-making body, charged with the task of framing a new Constitution for India. After the Provincial elections, which will be held after the end of hostilities, the entire membership of the Lower Houses of Provincial Legislatures shall, as a single electoral college, proceed to the election of the Constitution making body by the system of proportional representation. This new body shall be about one-tenth of the number of the electoral college. The Indian States shall be invited to appoint representatives in the same proportion to their population as in the case of representatives of British India as a whole and with the same powers as the British Indian members."

His Majesty's Government undertook to accept and implement forthwith a Constitution so framed, subject to the following two conditions : (i) "Any Province of British India that is not prepared to accept the new Constitution will have the right to retain its present constitutional position. Provision shall be made for its subsequent association to the Union, if it so decides. With such non-acceding Provinces, if they so desire, His Majesty's Government will be prepared to agree upon a new Constitution giving them the same full status of a Dominion as in the case of the Indian Union and arrived at by same procedure. The issue of accession will be finally decided by means of a plebiscite according to the majority vote in the Province, if its Legislative Assembly did not decide in favour of it, by a 60 per cent majority. The Indian States would similarly be free to join the new Union or not. The British Government will negotiate new treaties with the States, so far as this may be required in the new Constitution". (ii) "A treaty shall be negotiated between His Majesty's Government and the Constitution-making body. This treaty will cover all necessary matters arising out of the complete transfer of this responsibility from the British to the Indian hands. It will make provision for the protection of racial and religious Minorities in accordance with the past undertakings given by His Majesty's Government to the Minorities. No restriction shall, however, be placed on the power of the Indian Union to decide in future its relationship to other member states of the British Commonwealth."

It was, however, added, "During the War period, the British Government must inevitably have the responsibility for and retain the control and direction of the Defence of India as a part of their World War efforts, but the task of organising to the full the military, moral and material resources of India must be the responsibility of the Government of India with the co-operation of the peoples of India."


Appraisal of the Offer : The Proposals may be divided into two parts. First, there was the provision for the grant of full Dominion Status after the War with the right even to leave the British Commonwealth. Then, there was the proposal for the setting up of a Constituent Assembly for framing a Constitution for India. These proposals which provided for a long term solution of the Indian problem were, no doubt, more concrete and precise than the corresponding provisions of the August, 1940 Offer. But these were also open to some serious objections. Firstly, no limit was set for the actual grant of Dominion Status. Somebody dubbed the plan as a "post-dated cheque". Secondly, the Indian Princes were to nominate their representatives to the Constituent Assembly. This meant the presence of an undemocratic and reactionary bloc in the Constituent Assembly, about $\frac{1}{4}$ th of its total membership if not more. Thirdly, the Indian States were given the right to remain out of the union, even after they had enjoyed the right of framing its Constitution. Fourthly, the Provinces were given the right of remaining out of the union. This was a bait to the Muslim League and an indirect encouragement for the idea of Pakistan. Finally, it was not clear what rights of the Minorities the British Government would insist upon at the time of making the treaty. The long-term solution was, therefore, suspected by the nationalist forces in India.

The Rejection : The real cause for the rejection of the Proposals by the Congress, however, was the lack of willingness on the part of the British Government to surrender immediate control to the Indian hands. Ultimately, the proposals were rejected mainly on two grounds. First, Sir Stafford Cripps made it clear that under no circumstances, "even if all the parties wanted", the portfolio of Defence could be transferred to Indian hands. All that the Government was willing to do in this matter was to appoint an Indian Defence Member to look after some minor War accessories like canteens and amenities for troops. Every body realised that during the War, Defence was the chief problem and every thing else was to be subordinated to its needs. At the last stage of the negotiations, the Congress was prepared even to drop the condition of full control over the Defence and there was a possibility of a compromise on this issue, based on a division of the functions of the Commander-in-Chief and the Defence Member.

The second cause which ultimately led to the break-down of the negotiations was the unwillingness of the British Government

to treat the Interim Government as a Cabinet and to reduce the Governor-General to the position of a constitutional head, even with regard to matters other than the Defence. Earlier, Sir Stafford had given the impression that the British Government would be willing to do so, but when the negotiations began to yield fruitful results and a compromise was within sight, he began to argue the unreasonableness of the demand to make the Governor-General merely a constitutional head. This sealed the fate of the Proposals. The Hindu Maha Sabha and the Sikhs had rejected the Proposals even earlier because these could lead to the formation of Pakistan. The Liberals also rejected them as "a travesty of self-determination." The Muslim League argued that the Plan did not contain a clear promise of Pakistan and there was no provision for two Constituent Assemblies—one for the Muslim majority Provinces and the other for the Hindu majority Provinces. In the words of Dr. Pattabhi Sitaramayya, the Cripps Plan "embodied different items palatable to different tastes. To the Congress, it offered full Dominion Status, Constituent Assembly and the right to leave the British Commonwealth. To the Muslim League, there was the highly comforting provision of any Province having the right to join the Union or not. The Princes were not only given the right to join the Union or not, but were given the sole right to nominate representatives to the Constituent Assembly." Thus the Plan attempted to please everybody and ended in pleasing none. The way in which negotiations failed was sufficient to lend weight to the widely held belief in India that the Proposals were made, not with the intention to part with any power, but to assuage the international critics of the British policy in India.

The Proposals were suddenly withdrawn on April 11, 1942. The Congress was shocked. Churchill perhaps thought that the Congress could be put in the wrong and ignored, but he was mistaken. The Congress rose to the occasion and vindicated its stand on the Proposals, as later events revealed.



CHAPTER XXV

QUIT INDIA MOVEMENT

The failure of the Cripps Mission led to unprecedented disturbances throughout India. The British Government was not at all willing to part with power. The Congress was equally emphatic that an effective defence against Japan could be organized only by a popular Government. There was no meeting ground between the two sides. The Individual *Satyagraha* had failed to move the Government. Something more effective was now called for. Gandhiji evolved the idea of 'Quit India' in his articles in the *Harijan*, which he published after the failure of the Cripps Mission. The Congress Working Committee passed a Resolution at Wardha in July, demanding the withdrawal of the British from India. It was adopted by the All-India Congress Committee at Bombay on August 8, 1942.

Civil Disobedience sanctioned : The Resolution of August 8, 1942 stated "that the immediate ending of the British rule in India is an urgent necessity both for the sake of India and for the success of the United Nations. The continuation of that rule is degrading and enfeebling India and making her progressively less capable of defending herself and of contributing to the cause of world freedom. The possession of Empire (by the British) instead of adding to the strength of the ruling power has become a burden and curse. India, the classic land of modern imperialism, has become the crux of the question, for by the freedom of India will Britain and the United Nations be judged and the people of Asia and Africa be filled with hope and enthusiasm...No future promises or guarantees can affect the present situation or meet that peril. They cannot produce the needed psychological effect on the mind of the masses. Only the glow of freedom now can release that energy and enthusiasm of millions of people, which will immediately transform the nature of the War."

If India were made free, "a Provisional Government will be formed and free India will become an ally of the United Nations. Such a Government can only be formed by the co-operation of the principal Parties and groups in the country. It will thus be a composite Government representative of all important sections of the people of India. Its primary function must be to defend India and resist aggression, with all the armed as well as non-violent forces at its command. The Provisional Government will evolve a scheme for a Constituent Assembly, which will prepare a Constitution for the Government of India acceptable to all sections of the people. This Constitution, according to the Resolution, should be a federal one,

with the largest measure of autonomy for the federating Units and with residuary powers vesting in the Units". The Congress Working Committee resolved "to sanction for the vindication of India's inalienable right to freedom and independence, the starting of a mass struggle on non-violent lines, on the widest possible scale, so that the country might utilize all the non-violent strength it has gathered during the last 22 years of peaceful struggle." The Committee requested Gandhiji to take the lead and guide the nation in the steps to be taken in the coming struggle.

The Committee appealed to the people of India to hold together under the leadership of Gandhiji and carry out his instructions as disciplined soldiers of the Indian freedom. "They must remember that non-violence is the basis of the Movement...By embarking on a mass struggle, the Committee has no intention of gaining power for the Congress. The power, when it comes, will belong to the whole of India". In his speech before the All-India Congress Committee, Mahatma Gandhi declared that it was a decision "to do or die" and elaborated the nature of the contemplated movement. It was going to be the last struggle of his life to win the freedom of India. The people were warned, not to engage in any subversive or under-ground activities. It was not the physical quittal of the Britishers that was asked for, but an immediate declaration of India's Independence.

Government precipitates the Crisis : The famous Quit India Resolution was passed on August 8, 1942. On August 9, all the members of the Congress Working Committee including Mahatma Gandhi were arrested. Mahatma Gandhi was taken to the Agha Khan Palace at Poona and the members of the Working Committee were sent to the Ahmednagar Fort. The Congress was declared an unlawful association. Its offices were raided all over India and funds were frozen.

It seems that the Government had its plan ready in advance to crush the Congress. In his speech before the All-India Congress Committee on August 8, Mahatma Gandhi had expressed his intention to write to the Viceroy and approach some influential members of the United Nations, before he launched the Movement. All that the Resolution had done was to authorise Mahatma Gandhi to start the Movement.

Movement and Repression by the Government : Most of the top-ranking Congress leaders were arrested on August 9 throughout India. Those who were left out were rounded up in the next three or four days. The people were thus left leaderless. Their resentment took the usual form of *hartals*, processions and holding of meetings. But these harmless manifestations of public resentment were dealt with ruthlessly by the Government. Meetings were forcibly dispersed, *lathi* charged and even fired at. Section 144 was imposed at most of the places. In the face of such provocations

people at some places resorted to violence. In return, a veritable reign of terror was started by the Government and the people also did what they could to dislodge the Government. Some persons freely indulged in arson, murder and loot. According to the official version, about 250 Railway Stations were damaged, 500 Post Offices were attacked and 150 Police Stations were raided. The Government fired 538 times, as the result of which about 940 people were killed and 1630 injured; besides, some soldiers, police officers and policemen who were killed. In the Tata Iron and Steel Works, all the labourers numbering about 20,000 went on strike and resumed work only when the management assured them of its sympathy with the national cause. The press was gagged. In all, about 26,000 persons were arrested. The railway lines in Bihar and Eastern U.P. remained out of order for many weeks. In certain parts of India, like Ballia in Eastern U. P., the British administration was virtually uprooted and a provisional Government was set up by the people. Such areas were later 're-conquered' by the Government and the people there were subjected to inhuman treatment. At two or three places, people were even fired or bombed at from the air. In about three months, the Government was successful in crushing the uprising. The revolutionary leaders went underground and began to direct the movement secretly.

Attitude of the various Political Parties to the Movement :

The Socialist Party took a glorious part in the Movement. Its leaders like Jai Prakash Narain, Dr. Ram Manohar Lohia and Mrs. Aruna Asaf Ali organised a violent under-ground movement to dislodge the British Government. Jai Parkash Narain escaped from the Hazari Bagh Jail and remained a terror for month together for the Government. Later, he was arrested near Lahore and subjected to inhuman treatment in the prison.

The Communist Party had described the World War, when it broke out, as 'Imperialistic'; but when Russia joined the War, they began to regard it as the 'Peoples War.' They advocated full support for the Government in the War efforts and demanded the withdrawal of the Quit India Resolution by the Congress. They also wanted the Congress to start negotiations with the Muslim League on the basis of Pakistan. The Communist leaders, who were imprisoned in the earlier stages of the War, were now released by the Government. The policy of the Communist Party amounted to stabbing the nationalist forces of the country in the back.

The Muslim League tried to make capital out of the situation. The League said that the so-called national movement was aimed at enslaving the Muslims because its objective was to compel the Government to accept the Congress demand of a free and united India, where Muslims would permanently remain under the tyranny of the Hindu majority. Jinnah tried even to set up a Provisional Government at the Centre with the help of the Non-Congress elements but the move was not successful. He declared

that he was always willing to start negotiations with the Congress on the basis of Pakistan. In one of his statements, he boasted that, if Mr. Gandhi were to write to him from jail for solving the *impasse*, no power on earth could prevent the latter from reaching him. After reading the statement, Mahatma Gandhi actually wrote to him with a view to solving the deadlock. The Governor-General stopped the letter from reaching Jinnah, who then placed the entire blame on the shoulders of the Congress.

Gandhiji's historic Fast of 21 days : Within a few weeks after the disturbances, the Government came out with the statement that they had a clear evidence in their possession, which showed that Mahatma Gandhi and the members of the Congress Working Committee had a hand in goading people to violence. The Government started a propaganda campaign in India and abroad to this effect. Mahatma Gandhi resented this charge bitterly. He wanted that either he should be allowed to clear his position publicly or he should be tried in a court of law. The Government took up the position that Gandhiji could not be released, unless the Quit India Resolution was withdrawn. Gandhiji replied that, unless he was allowed to meet members of the Congress Working Committee, he was unable to reconsider the attitude of the Congress towards the movement. Gandhiji was, however, greatly perturbed at the acts of violence committed by the people, whatever the provocation.

It was in this state of helplessness and mental agony that Gandhiji started his famous fast for 21 days on February 10, 1943. After 13 days his condition became very critical. The doctors stated that Gandhiji might collapse within 24 hours, unless he was released. An emergent meeting of the Viceroy's Executive Council was held and a majority of the Executive Councillors expressed the opinion that Gandhi's release would disturb public peace ! Messrs H.P. Modi, N. R. Sarcar and M. S. Aney, who voted against the majority decision, resigned from the membership of the Executive Council as a protest. Evidently, the majority of the Councillors voted in accordance with the wishes of Lord Linlithgow, the Governor-General, who was prepared even to see Gandhiji eliminated from the Indian political scene. The decision of the majority also exposed the servile position of the Indian Executive Councillors even after the expansion of 1941.

A Non-Party Conference was held at Delhi, wherein the immediate release of Gandhiji was urged. Mr. Jinnah and the Muslim League did not join even this Conference. So the Government did not release Mahatma Gandhi. It insisted on the withdrawal of the Quit India Resolution and public repentance by Gandhiji, as conditions precedent to Gandhi's release. It is said that even instructions were sent by the Government to local officers as to how they were to deal with the situation, in case the worst happened to Gandhiji. Luckily, Gandhiji survived the ordeal.

Release of Gandhiji : In April, 1944, Gandhiji fell seriously ill. Lord Wavell had taken over from Linlithgow as Viceroy in October, 1943. Rather than see Gandhiji die in prison, Lord Wavell preferred to release him on May 6, 1944. The decision to release Gandhiji might have been influenced by the invasion of the Indian territory by the Indian National Army under the command of Netaji Subash Bose. The I. N. A. had penetrated the Indian soil and taken possession of a small territory of Manipura and Aishevpur comprising about 10,000 square miles. After coming out of the prison, Gandhiji requested Lord Wavell to enable him to meet the members of the Congress Working Committee in order to review the political situation in the country, especially in the light of the new developments. But the Government rejected this request. Perhaps the Government thought that Gandhiji could himself decide the course of action for the Congress.

CHAPTER XXVI

C. R. FORMULA AND WAVELL PLAN

After the failure of the Cripps Mission, the All-India Congress Committee had met in April, 1942 to register their protest against the attitude of the Government. Mr. C. Rajagopalachari openly advocated the acceptance of Pakistan as a basis of settlement with the Muslim League. No other important member of the Congress agreed with him on the advisability of this step. As he wanted freedom of expression on this issue, he resigned from the Congress to propagate the desirability of accepting Pakistan, in case the Muslim League was adamant over it. Rajaji was of the opinion that in view of the Muslim League's insistence on Pakistan and the British Government's sympathy with their demand, it was no longer possible to avoid the creation of Pakistan. For his views, Rajaji was even accused of generating and encouraging anti-national forces in the country. As Rajaji had resigned from the Congress before the Quit India Resolution was passed, he remained out during the years 1942-44, when all other top-ranking Congress leaders were sent to jail. When Gandhiji was released in May, 1944, Rajaji evolved a formula, known as the C. R. Formula, which was to form the basis of a Congress-League settlement. Mr. Rajagopalachari publicly declared that he had 'full approval' of Gandhiji to this new basis for a settlement with the Muslim League.

C. R. Formula : The following solution was suggested :—“(i) The Muslim League endorses the Indian demand for Independence and will co-operate with the Congress in the formation of a Provisional Interim Government for the transitional period. (ii) After the termination of the War, a Commission shall be appointed for demarcating contiguous districts in the North-West and East of India, where the Muslim population is in an absolute majority. In the areas thus demarcated, a plebiscite of all the inhabitants, held on the basis of adult suffrage or any other practical franchise, shall ultimately decide the issue of separation from Hindustan. If the majority decide in favour of forming a Sovereign State separate from Hindustan, such a decision shall be given effect to, without prejudice to the rights of districts on the border to choose to join either State. (iii) It will be open to all Parties to advocate their points of view before the plebiscite is held. (iv) In the event of separation, mutual agreement shall be entered into for jointly safeguarding Defence, Commerce, Communications and for other essential purposes. (v) Any transfer of population shall only be on an absolutely voluntary basis. (vi) These terms shall be binding

only in case of transfer by Britain of full power and responsibility of the Government of India. (vii) Gandhiji and Mr. Jinnah agree to these terms of settlement and will endeavour respectively to get the approval of the Congress and Muslim League for these terms."

Rejection of the Formula : Gandhiji approached Mr. Jinnah for a settlement on the basis of this Formula after his release on May 6, 1944. Jinnah rejected this offer because he insisted that Pakistan must include the whole of the six Muslim majority Provinces, i.e., Sind, North-West Frontier Province, the Punjab, Bengal, Assam and Baluchistan. He was opposed to giving Non-Muslims the right of participation in the plebiscite. He was also not willing to accept any joint control of subjects like Defence, Commerce and Communications. Jinnah wanted even a corridor connecting the Western and Eastern parts of Pakistan. He denounced vehemently the type of Pakistan offered to him in the C. R. Formula and held that it was a 'maimed, mutilated and moth-eaten' Pakistan, which he would not accept under any circumstances whatsoever. It may be added that the type of Pakistan eventually accepted by Mr. Jinnah under the Mountbatten Plan was no better.

THE WAVELL PLAN

Lord Wavell was the Commander-in-Chief of India before his appointment as the Governor-General in October, 1943. He had taken a prominent part in the negotiations during the Cripps Mission. In the beginning of 1945, the War in Europe ended in a complete victory for the Allies. On March 21, Lord Wavell left for England to have consultations with the Churchill Cabinet, regarding the Indian political deadlock. He returned to India on June 4, 1945. Ten days after his arrival, a new solution was offered by the British Government for solving the Indian deadlock, which is popularly known as the Wavell Plan.

Why a new offer ? : The War in Europe had ended, but the War with Japan was continuing. Attention was now focussed on the Eastern front. India's strategic position in the War with Japan once again came into prominence as it did in 1942, when Sir Cripps came. Now that the hands of the British Government were comparatively free, a fresh attempt was made to bring India whole-heartedly into the War. It is said that there was also some pressure from the Russian Government for ending the Indian deadlock. Moreover, the general elections had been ordered in England. The Labour Party claimed that the Churchill Government was absolutely incapable of arriving at an amicable settlement with the Indian leaders. Churchill wanted to disprove this, by showing that he was equally eager to solve the Indian issue. The way the negotiations abruptly ended about a month later, i.e., immediately after the general elections in England were over, leads one to the

conclusion that the Wavell Plan was nothing but an election stunt engineered by the Conservative Government. Another object of this move might have been to bring into prominence the Hindu-Muslim differences in India and to make them appear as the real cause for the Indian stalemate.

Terms of the Plan : The Plan was announced simultaneously in the House of Commons by Mr. Amery, the Secretary of State, and Lord Wavell in a broadcast speech in India on June, 14, 1945. The object of the Plan, as stated, was to solve the Indian political deadlock. The Plan offered only an interim arrangement, which, it was said, would in no way prejudice the future settlement in India and the right of Indians to frame their own constitution. The main part of the Proposal was to reconstitute the Executive Council of the Governor-General in such a way as to give the Caste Hindus and the Muslims equal seats. The members of the Council were to be all Indians, except the Governor-General and the Commander-in-Chief, who were to retain responsibility for the Defence of India. The War Portfolio was not to be surrendered, so long as the British Government remained responsible for the Defence of India.

For the first time, the Department of External Affairs was proposed to be placed under the charge of an Indian. A British High Commissioner in India was to be appointed, who would look to the British commercial and other interests on the lines of the Dominions. This new Executive Council was to work within the frame-work of the Act of 1935. The Governor-General was to retain his power of veto against a majority decision of the Councillors. The interference of the Secretary of State was to be decreased to the minimum and would only be in the interests of India. The Government hoped, that, if the Indian leaders accepted the Plan, it would become easier to hold general elections in India in the near future, to scrap Section 93 in the Provinces and to revert to the normal constitutional Governments in the Provinces, as existed before the resignation of the Congress Ministries at the outbreak of the War.

Conference at Simla : To create the necessary atmosphere, the Congress leaders were released and a Conference was called at Simla on June 29, 1945, to which the leaders of the Congress, the Muslim League, Sikhs, Scheduled Castes, Europeans, the Unionist Party of the Punjab, Mahatma Gandhi and Mr. M.A. Jinnah were invited. The negotiations were carried on at Simla for about a fortnight with breaks. On July 14, Lord Wavell announced the breakdown of the negotiations and the whole episode ended in a fiasco.

Causes of the Failure : To start with, all the Political Parties had accepted the principle of the Plan ; namely, a parity between the Caste Hindus and Muslims in the Executive Council.

This was, evidently, unfair to the Caste Hindus, who were about 70 per cent of the population and were yet bracketed with Muslims, who were only 30 per cent. The Congress swallowed this bitter pill in its usual eagerness to come to terms with the Muslims at any cost and to achieve self-government for India at the earliest possible time. The negotiations eventually broke down because Mr. Jinnah insisted that the Muslim League should be recognised as the sole representative organisation of Muslims. He strongly objected to the claim of the Congress to nominate Muslims on the Executive Council and the right of the Unionist of the Punjab to nominate one Muslim to represent them. The Congress was prepared to nominate one or two Muslims, even in its quota of five, meant for the Caste Hindus. The Congress was not prepared to give up its right of nominating Muslims because that would have been unfair to the nationalist Muslims, who were members of the Congress. Moreover, this was inconsistent with the character of the Congress as a national organization.

Government blamed for the breakdown : Lord Wavell said that the Plan was unacceptable to Mr. Jinnah, who was not prepared to admit the right of the Congress or the Unionists of the Punjab to nominate Muslims under any circumstances. Maulana Azad, who represented the Congress as its President, disclosed that before the negotiations started Lord Wavell had given him an assurance that no single Party to the Conference would be allowed to obstruct settlement unreasonably. Yet this was exactly what was allowed to happen. Probably, the British Government was no longer keen for a settlement because the general elections in England were over by that date. Mr. Jinnah ridiculed the demand of the Congress and the Unionists to nominate Muslims. He said that the Wavell Plan was a snare to weaken the claim of Muslims to Pakistan and to disrupt their solidarity. According to him, the Muslim League under the Plan would have been reduced to a minority of 1/3 in the Executive Council because all other Minorities would have voted with the Congress on the crucial issue of Pakistan. Jinnah said that he would not depend on the veto of the Governor-General to protect the Muslim interests.

Good that came out of the Plan : The Wavell Plan was not altogether barren of good results. It exposed the real character of the Conservative Government. Churchill had not changed. Jinnah stood revealed. It was now clear that he would be satisfied with nothing less than Pakistan. The encouragement which the Conservative Government was giving to Jinnah was also proved. It was further clear that Jinnah would be allowed to block constitutional advance in India, so long as the British Government could help it.

Moreover, the release of the Congress leaders, especially Jawahar Lal Nehru and Sardar Patel, breathed fresh life into the country. The three years of the Movement had made the people

very despondent. Doubts and fears had beset their minds. The Government had used its propaganda machinery to discredit Mahatma Gandhi and the Congress. The authorities were successful in making full use of the Indian resources for the War efforts, while the national leaders groaned in jail, and progressive elements looked on helplessly. Some persons had even started doubting the wisdom of the Congress in taking up the Quit India stand.

Immediately after their release on the eve of the Simla Conference, Mr. Jawahar Lal Nehru and Vallabhbhai Patel gave public statements, which dispelled the fears and doubts of the people, once for all. In brave words, they justified the Movement including the acts of violence committed by the people and owned full responsibility for all that the public had done. These words had a magical effect. Despondency gave place to hope. The people were prepared, once again, to undertake the struggle and make sacrifices for the emancipation of their motherland. The Congress was popular again and a thumping majority was assured for it in the ensuing general elections.

I. N. A. Trial : Another event which infused new enthusiasm and energy in the people was the I. N. A. Trial. Shah Niwaz, Dhillon and Seghal, who had left the Indian Army during the War to join the Indian National Army of Netaji Subash Bose, were tried as deserters before a Court Martial in the Red Fort at Delhi. The Congress assumed responsibility for defending the accused, who were owned as patriotic sons of India. The best lawyers of the land offered themselves *gratis* to act as Defence Counsels. Even Mr. Jawahar Lal Nehru donned the robes of a Barrister after a period of about 30 years. The whole trial acquired a dramatic appearance. Everybody, everywhere in India, talked about the I. N. A. Trial at the Red Fort. 'Jai Hind', the slogan of the Indian National Army, became the most favourite salutation and slogan of the nation. The Court Martial, however, found the three accused guilty and awarded death sentences. But there was so much of sympathy in the public for the accused that the Government did not dare to execute the sentences. All the three accused were set free by the Governor-General in the exercise of his special powers. The Congress scored another political victory and its credit rose very high.

Govt
~~SECRET~~
~~CONFIDENTIAL~~
 B. A. 418
 87-

CHAPTER XXVII

GENERAL ELECTIONS AND CABINET MISSION PLAN

After the failure of the Simla Conference, Lord Wavell convened a Conference of the Governors at New Delhi in August, 1945, wherein it was decided to hold general elections in India. In the meantime, the elections in England were also over. The Labour Government came into power with an absolute majority for the first time. Churchill was replaced by Attlee as Prime Minister. Mr. Amery, who had been Secretary of State for India under the Conservative Government, was defeated in the elections and in his place Pethick-Lawrence became the Secretary of State for India.

Lord Wavell was called for consultations by the new Labour Government in September, 1945. Immediately after his return, he issued a statement, showing a keen desire on the part of the new Government to introduce self-government in India at the earliest possible time. The All-India Congress Committee met towards the end of September and decided to contest the elections. The Election Manifesto, issued by the Congress before the elections, endorsed the Quit India stand taken up by the Congress in 1942. The Quit India Resolution of August 8, 1942 formed the focal point of the Election Manifesto, which stated: "By its (the Quit India Resolution) demand and challenge the Congress stands today. It is on the basis of this Resolution and with its battle-cry that the Congress faces the elections." We have already noted the tremendous effect that the speeches of Jawahar Lal Nehru and Sardar Patel had made on the minds of the people and how they had fired the nation with new enthusiasm and hope. The I. N. A. trial had also worked a wonder. The Election Manifesto endorsed the position taken by the Congress in 1942 and paid glowing tributes to those who had suffered and died in the 1942 Movement.

Results of the elections: The results of the general elections in India were revealing in many ways. The Congress swept the polls and captured almost all the General and some Muslim seats. The success of the Muslim League was also phenomenal among the Muslims. It captured 446 Muslim Seats out of 495. In the Punjab, where the Unionists had remained in power for the last so many years, the Muslim League came out as the largest single Party, completely falsifying the claim of the Unionists to speak for the Muslims of the Punjab. The Unionists were not able to win even 10 seats against the Muslim League. The Muslim League failed only in the North-Western Frontier Province, where the

influence of the Khan Brothers and *Khudai Khidmatgars* was still supreme. The elections also proved that the Muslims of India were over-whelmingly behind the Muslim League.

As a result of the elections, the Congress formed Ministries in seven Provinces out of eleven. The *Khudai Khidmatgars* came to power in the N.W.F. Province. They were in full sympathy with the Congress. Only in Bengal and Sind the Muslim League was able to form Ministries ; but that in no way disproved its most representative character among the Muslims. In the Punjab, the Unionists formed the Government by combining with all other Parties against the Muslim League, which simply exasperated the League.

Statement of Mr. Attlee : The Labour Government proved that it was quite earnest to solve the Indian problem. During the winter of 1945-46, the Labour Government sent a Delegation, consisting of some important members of the British Parliament, to watch the general elections in India from close quarters and to examine the desirability of transferring power to Indians.

In the House of Commons, Mr. Attlee, the Prime Minister of England, issued a statement on March 15, 1946, which was historic in many ways. It clearly admitted the right of Indians to self-determination and their right to frame constitution for a free India. It even admitted their right to go out of the British Commonwealth, if they so desired. Mr. Attlee said, "We are very mindful of the rights of Minorities and Minorities should be able to live free from fear. On the other hand, *we cannot allow a Minority to place a veto on the advance of the Majority.*" The last part of the statement was most welcome to the Congress. It implied that the British Government would no longer permit the Muslim League to stand in the way of the constitutional progress of India. Later events, however, proved otherwise. Mr. Jinnah was allowed to block the advent of Independence till his demand for Pakistan was conceded.

CABINET MISSION PLAN

On March 15, 1946, it was also announced that the British Government was sending a Cabinet Mission to India to resolve the Indian Political deadlock. On March 23, 1946, three Cabinet members, Pethic Lawrence, Secretary of State for India under the Labour Government, Sir Stafford Cripps and Mr. A. V. Alexander arrived in India. A long chain of meetings and negotiations followed. In all, 472 Indian leaders were interviewed in 182 sittings. Every shade of opinion was taken into consideration. The main Parties dealt with, however, were the Congress and the Muslim League. After prolonged discussions in New Delhi, a Tri-Party Conference was held at Simla between the Government, the Congress and the Muslim League. As the Congress and the Muslim

League could not arrive at an agreement, the Cabinet Mission, with the full approval of the British Government, suggested their own Plan for solving the constitutional deadlock.

Terms of the Cabinet Mission Plan : The main recommendations of the Plan were the following :—

A Union of India : (i) There shall be a Union of India, including both the British India and the Indian States, which shall deal with Foreign Affairs, Defence and Communications and shall also have powers necessary to raise finances required for the above subjects. All subjects other than these and all residuary powers shall vest in the Provinces. The States will retain all subjects other than those given to the Union.

(ii) The Union shall have an Executive and a Legislature constituted from the British India and States' representatives. Any question raising a major communal issue in the Legislature shall require, for its decision, a majority of the representative present and voting of each of the two major communities as well as a majority of all the members present and voting.

(iii) Provinces should be free to form Groups with separate Executives and Legislatures, and each Group could determine the Provincial subjects to be taken in common by that Group. There shall be three Groups : A—Madras, Bombay, U.P., Bihar, C.P. and Orissa ; B—Punjab, N.W.F. Province and Sind ; and C—Bengal and Assam.

(iv) The Constitution of the Union and of the Groups shall contain a provision whereby any Province could, by a majority vote of its Legislative Assembly, call for a consideration of the term of the Constitution after an initial period of ten years and at ten yearly intervals thereafter. This meant that a Province could demand the revision of the Constitution and could even leave a Group after ten years. It evidently implied that a Group could also leave the Union after 10 years.

Constitution-making body : (v) For the purpose of setting up a Constitution-making body, each Province shall be allotted a total number of seats proportional to its population, roughly in the ratio of one to a million. Seats allotted to each Province shall be divided between the various communities in proportion to their population in that Province. The principle of weightage to Minorities was discarded. Only three classes of electorates were recognized, i. e., General (all others than Muslims and Sikhs), Muslims and Sikhs (only in the Punjab). This, according to the Mission, was the fairest and the most practicable basis and the nearest substitute for representation by adult suffrage.

According to this principle the Constituent Assembly was to contain 292 members from the British Indian Provinces, as detailed below :—

SECTION A

<i>Province</i>	<i>General</i>	<i>Muslims</i>	<i>Total</i>
Madras	45	4	49
Bombay	19	2	21
United Provinces	47	8	55
Bihar	31	5	36
Central Provinces	16	1	17
Orissa	9	0	9
	167	20	187

SECTION B

<i>Province</i>	<i>General</i>	<i>Muslims</i>	<i>Sikhs</i>	<i>Total</i>
Punjab	8	16	4	28
N.W.Frontier Province	0	3	0	3
Sind	1	3	0	4
	9	22	4	35

SECTION C

<i>Province</i>	<i>General</i>	<i>Muslims</i>	<i>Total</i>
Bengal	27	33	60
Assam	7	3	10
TOTAL	34	36	70

The total strength of the Constituent Assembly was to be as follows :—

Total for Sections A, B and C : $187 + 35 + 70 = 292$
 Maximum for Indian States : 93

Chief Commissioners' Provinces—one each for Delhi, Ajmer-Merwara, Coorg, and British Baluchistan. British Baluchistan was attached to Section B and the remaining three Commissionaries to Section A)

= 4

= 389

In the British Indian Provinces, members shall be elected by each Provincial Legislative Assembly community-wise (General,

Muslim or Sikh) through proportional representation by a single transferable vote. The method of selecting members of the Constituent Assembly from the States will have to be determined by consultation. The States would, in the preliminary stage, be represented by a Negotiating Committee.

(vi) After the preliminary meeting of the Constituent Assembly, the Provincial representatives shall divide up into the three Sections shown in the Table above. These Sections shall proceed to settle the Provincial Constitutions for the Provinces, included in each Section, and shall also decide whether any Group Constitution shall be set up for those Provinces, and if so, with what Provincial subjects the Group should deal. As soon as the new constitutional arrangements have come into operation, it shall be open to any Province to elect to come out of any Group in which it has been placed. Such a decision shall be taken by the new Legislature of the Province after the first general elections under the new Constitution.

(vii) The representatives of the Sections and the Indian States shall re-assemble for the purpose of settling the Union Constitution. In the Union Constituent Assembly, resolutions varying the distribution of subjects between the Centre and the Provinces or raising any major communal issue shall require the approval of a majority of the representatives, present and voting, of each of the two major communities.

(viii) It will be necessary to negotiate a treaty between the Union Constituent Assembly and the United Kingdom to provide for certain matters arising out of the transfer of power. A hope was expressed that India would decide to remain a member of the Commonwealth. But, at the same time, she was given the right to go out of the Commonwealth, if she so desired.

(ix) An Interim Government, having the support of the major Political Parties, would be set up as early as possible. In this Government, all the Portfolios, including that of the War Member, shall be held by the Indian leaders, having the full confidence of the people. The British Government shall give full co-operation to the Interim Government thus formed in matters of administration and in bringing about as rapid and smooth a transition as possible.

(x) The British Government shall implement the Constitution drawn by the Constituent Assembly.

(xi) After the transfer of Power to the British Indian Provinces, it shall not be possible for Britain to retain Paramountcy over the Indian States; nor could Paramountcy be transferred to the new Government of the British India.

Pakistan ruled out: The Cabinet Mission seriously thought over the desirability of establishing a separate and fully independent state of Pakistan, as claimed by the Muslim League and came to the following conclusions :

Pakistan would not solve the communal minority problem. Firstly, the number of non-Muslims in Pakistan and Muslims in the remainder of the British India would still remain considerable. Secondly, there was no justification for including in Pakistan those Districts of the Punjab, Bengal and Assam in which the population was predominantly non-Muslim. Every argument that could be used in favour of Pakistan could equally be used in favour of the exclusion of the non-Muslim areas from Pakistan. Thirdly, the small sovereign state of Pakistan, confined to the Muslim-majority areas alone, would not provide an acceptable solution of the communal problem because it would involve a radical partition of the Punjab and Bengal and that would be contrary to the wishes and interests of a very large proportion of the inhabitants of these Provinces. Fourthly, the division of the Punjab would of necessity divide the Sikhs, leaving substantial bodies of Sikhs on both sides of the boundary, which was unfair to that community. Fifthly, Pakistan was not a feasible proposition even on administrative, economic and military considerations. It would be suicidal to disrupt the Post and Telegraph System and the Defence Forces. Sixthly, the two Sections of the contemplated Pakistan contained most vulnerable frontiers in India and for a successful Defence the areas of Pakistan would be insufficient. Seventhly, there would be greater difficulty for the Indian States in associating themselves with a divided British India. And finally, there was the geographical fact that the two halves of the proposed Pakistan state would be separated by hundreds of miles and the communications between them, both in war and peace, would be dependent on the goodwill of India.

Grouping Controversy : One of the most controversial points in the Cabinet Mission Plan was, whether Grouping of Provinces into Sections A, B and C was optional or compulsory. Unfortunately, the language of the Plan, was ambiguous on this point. According to Article 15(5) of the Plan, "Provinces should be free to form Groups with Executives and Legislatures, and each Group could determine the Provincial subjects to be taken in common". From this, it appeared as if it was optional for the Provinces whether or not to join the Groups. But Articles 19(5) and 19(8) suggested that the Grouping was compulsory. The Article 19(5) ran as follows, "These Sections shall proceed to settle the Provincial constitutions for the Provinces included in each Section and shall also decide whether any Group constitution shall be set up for those Provinces, and if so, with what Provincial subjects the Group should deal". Paragraph (8) added, "As soon as the new constitutional arrangements have come into operation, it shall be

open to any Province to elect to come out of any Group, in which it has been placed. Such a decision shall be taken by the Legislature of the Province, after the first general elections under the new Constitution." The Congress held the view that it was optional for a Province whether or not to join a Group, and that a Province was free whether or not to submit to a Group constitution, after it was framed. The Muslim League, on the other hand, was of the opinion that it was compulsory for a Province to join the Group in which it was placed and that the decisions in a Section were to be taken by a simple majority vote of the representatives in that Section. In other words, the Provinces must, in the first instance, submit to the constitution framed by the Groups. It was only after the general elections were held that it would be open to any Province to elect to come out of the Group, in which it had been placed.

The British View : On May 25, 1946, while elucidating the Plan, the Cabinet Mission said, "The interpretation put by the Congress on para 15 of the Statement to the effect that the Provinces can, in the first instance, make the choice whether or not to belong to the Section in which they are placed, does not accord with the Delegations' intentions. The reasons for the Grouping of the Provinces are well-known and this is an essential feature of the scheme and can only be modified by agreement between the Parties. The right to opt out of a Group can be exercised by a Province, after the first elections under the new Provincial constitution by a majority vote of its Legislative Assembly." Thus, the Cabinet Mission held, from the very beginning, that Grouping was compulsory according to their intentions.

But the Congress continued to insist on its own interpretation of the Grouping Clauses. By December, 1946, the Congress had formed the Interim Government. It accepted the Plan, subject to its own interpretation. The Muslim League also accepted the Plan to start with. The British Government was anxious to bring the Muslim League in the Interim Government and the Constituent Assembly. The main difficulty, in the beginning, was the different interpretations put forward by the Parties on the Grouping Clauses. The British Government in their Statement of December 6, 1946, after taking into consideration the views of the Congress and the Muslim League leaders, who were called to London for that purpose, unequivocally declared that the formation of Groups was compulsory, the Group constitutions would be binding over the Provinces and that decisions in the Sections, in the absence of an agreement to the contrary, would be taken by a simple majority vote of the representatives in the Sections. It was made clear, once again, that the right to opt out could be exercised only afterwards. Thus the interpretation of the British Government was wholly in accord with the interpretation of the Muslim League and against the one put forward by the Congress.

Merits of the Plan : (The Plan was, in the first instance, a compromise between the stands taken up by the Congress and the Muslim League. The Congress stood for a united India with a strong Centre. The League wanted Pakistan. The Plan offered a united India with a weak Centre.) Thus the Congress view-point was accommodated by offering to it a united India. To the Muslim League, the Plan offered : (a) a weak Central Government with only three subjects ; (b) a provision at the Centre that all major communal issues should require for their decision a majority vote of the representatives of each of the two major communities ; (c) compulsory Grouping of the Provinces on communal lines which was in accord with the demand of Pakistan by the League, and (d) the provision that, in the Constituent Assembly, the Plan would not be altered, nor any decision taken on major communal issues without the approval of the majority of the Muslim representatives. (The Plan was, therefore, an attempt to strike a middle course between the view points of the Congress and the Muslim League.) Mahatma Gandhi realised the difficulties of the Mission and regarded the Plan as "the best document the British Government could have produced" in view of the circumstances prevailing in the country.

(Secondly, according to the Plan, the Constituent Assembly was to be formed on a very equitable and fair basis. Communal weightage was to be discarded. The Indian States were not to be given representation any more than their population warranted. Only three communal groups were to be recognised, i. e., General (Hindus), Muslims and Sikhs (in the Punjab only). The Europeans, the Anglo Indians, the Christians and various other groups which were given separate representation earlier were no longer to be recognised as separate entities.) Thirdly, it was for the first time that the British Government had admitted the right of *the people of the Indian States* to decide their political destinies. (The reference to a Negotiating Committee, which was to settle the method of choosing the States representatives, was a clear indication that the right did not belong to the Princes.) Fourthly, all the members of the proposed Constituent Assembly were to be Indians. The European members of the Provincial Legislative Assemblies were told not to exercise their vote at the time of electing members to the Constituent Assembly.) Fifthly, the Interim Government, which was to be set up was to be given the greatest possible freedom in the running of the day-to-day administration of India. All Portfolios, including that of the War Member, were to belong to Indians.) And finally, the Constituent Assembly was to be a fully sovereign body within the frame-work of the Plan. The British Government, it was declared, would implement the Constitution framed by that body and would take steps to surrender sovereignty over India, subject only to adequate provision being made in the Constitution for the protection of Minorities and willingness on the part of the Constitution-making body to conclude

a treaty with His Majesty's Government to cover matters arising out of the transfer of power. Thus the Cabinet Plan was the first honest attempt to recognise the right of Indians in a clear manner to frame their own Constitution, to be free and to go out of the British Commonwealth, if they so desired.

Criticism of the Plan : The Plan was variously criticised. It was said that it did not promise full powers to the Interim Government and that the Constituent Assembly was not fully sovereign. This was, of course, true. But the Cabinet Mission in a subsequent elucidation on May 25, 1946 made it absolutely clear that they wanted to give the Interim Government and the Constituent Assembly as much freedom as was possible. In view of this assurance, the Congress accepted the Plan on June 25, 1946. The Muslim League resented the absence of Pakistan, but later, on June 6, accepted it as containing the substance of Pakistan. The Sikhs, though critical of the Plan, ultimately accepted it after an assurance from the Congress that their interests would not be ignored. The Hindu Maha Sabha resented compulsory Grouping and a possibility of the division of the country at some future date. The Communist Party objected to its communal provisions, composition and the limitations on the powers of the Constituent Assembly. But, as already stated, most of these shortcomings could not be avoided, keeping in view the difficulties which the Mission wanted to solve.

The Fate of the Plan : We have already noted that the Plan was accepted by the Muslim League on June 6, 1946 and by the Congress on June 25, 1946. The elections to the Constituent Assembly proposed under the Plan were then held. In these elections, the Congress captured 199 seats out of the total of 210 General Seats. Out of the total of 296 seats allotted to the British India, the Congress captured 211 Seats and the Muslim League 73. Mr. Jinnah was disappointed by the results of the elections and the "brute majority" of the Congress. This probably led to the rejection of the Plan by the the Muslim League on June 29, 1946.

We have already noted that on December 6, 1946, the British Government agreed to the interpretation of the Grouping Clauses as put forward by the Muslim League. In the statement of December 6, the British Government said, "Should the Constitution come to be framed by a Constituent Assembly in which a large section of the Indian population had not been represented, His Majesty's Government could not, of course, contemplate, forcing such a Constitution upon any unwilling parts of the country." This was clearly an attempt on the part of the British Government to coerce the Congress to accept the interpretation of the British Government regarding 'Grouping'.

The Congress ultimately accepted the interpretation of the British Government with regard to the procedure to be followed

in the Sections. But even then the Muslim League was not prepared to send its members to the Constituent Assembly, which was scheduled to meet on December 9, 1946. Mr. Jinnah began to claim a separate Constituent Assembly for Pakistan. When the Constituent Assembly eventually met on December, 9, the representatives of the Muslim League were conspicuous by their absence.

Formation of the National Government : The Cabinet Mission had authorised the Governor-General to establish an Interim Government with the representatives of the main Political Parties as early as possible. The Congress rejected the offer made by Lord Wavell immediately after the statement of the Cabinet Mission to form an Interim Government on the basis of parity between the Hindus, including the Scheduled Castes and the Muslim League. This position was even worse for the Congress than the one visualised under the Wavell Plan, where parity between the Caste Hindus and Muslims was proposed. On June 16, 1946, Lord Wavell invited some Indian leaders to form the Interim Government, which included not a single nationalist Muslim, as the representative of the Congress. The Congress rejected this proposal. A care-taker Government of 7 Members was formed on June 29. The Muslim League tried hard to form the Government with other Parties, leaving out the Congress, but the position was not acceptable to the Government. On July 22, Lord Wavell communicated to the Congress and the Muslim League a new proposal for the formation of the National Government consisting of 14 Members, 6 representing the Congress including a representative of the Scheduled Castes, and 5 representing the Muslim League. The Congress could nominate nationalist Muslims within its quota. The League insisted on the Congress-League Parity and objected to the inclusion of any nationalist Muslim amongst the representatives of the Congress. The Congress accepted this proposal. Thus, when on August 24, 1946, Mr. Jawahar Lal Nehru was invited to form the Interim Government, the League had rejected both the short-term and the long-term proposals of the Plan. On the other hand, the Congress had accepted both. On September 2, 1946, the following persons formed the National Government : Mr. Jawahar Lal Nehru, Sardar Vallabhbhai Patel, Dr. Rajendra Prasad, Mr. Asaf Ali, Mr. C. Rajagopalachari, Mr. Sarat Chandra Bose, Dr. John Mathai, Sardar Baldev Singh, Sir Shaffaat Ahmad, Mr. Jagjivan Ram, Syed Ali Zaheer and Mr. C. H. Bhaba. Two Muslim Members were to be appointed later. This was clearly not to the liking of the Muslim League.

Direct Action by the League : On June 29, 1946, the Muslim League not only rejected the Cabinet Mission Plan, but even proposed the policy of Direct Action for achieving Pakistan. This Direct Action was proposed, not against the Government, but against the Non-Muslims, especially the Hindus. In furtherance

of this policy, the Muslim Leaguers started riots in the Punjab, Calcutta and East Bengal, which resulted in a considerable loss of life and property. The formation of the Interim Government on September 3, without the Muslim League on it, infuriated the League still further. Lord Wavell, however, continued his efforts to bring the Muslim League in the Interim Government and eventually succeeded in doing so on October 25, 1946. Five Members of the National Government resigned to make room for the Muslim League Members.

Work of the Interim Government : Before the joining of the Muslim League, the National Government was able to establish some healthy conventions. It worked under the leadership of Mr. Jawahar Lal Nehru. It declared itself collectively responsible to the Central Legislature and considered itself bound to resign if and when out-voted. It worked as a team.

Dissensions arose, when the Muslim League joined the Interim Government. Mr. Liaqat Ali Khan, the leader of the Muslim League Members, declared that his party would not recognize Mr. Nehru as the leader of their group also. The Muslim League Members worked as a separate bloc and often declared themselves against the policies of the remaining Members. The Muslim League evidently accepted office not to work the long-term Plan, but to acquire a position of vantage for itself. Under the circumstances, the Government could hardly function effectively. The Muslim League remained in the Government till August 14, 1947, whereafter it formed its own Government in Pakistan.

CHAPTER XXVIII

MUSLIM COMMUNALISM AND PAKISTAN

Growth of Muslim Communalism : The history of Muslim Communalism may be divided into four periods. The first period starts with the establishment of the British Rule in India and ends in 1876. During this period, Muslims remained hostile to the British Rule. The Mutiny of 1857, was attributed mostly to Muslims. The British Government, consequently, treated them as a seditious element and suppressed them in various ways. After the Mutiny, the attitude of the Government towards Muslims became stiffer. The second period begins with the establishment of the M. A. O. College at Aligarh in 1876 and ends in 1906 with the birth of the Muslim League. The M. A. O. College was started by Sir Syed Ahmed with the purpose of spreading Western education among the Muslims and bringing about better relations between them and the Government. Mr. Beck, an Englishman, who was the Principal of the M. A. O. College, also played a considerable part in improving relations between the Government and the Muslims. In 1885, the Indian National Congress was formed, and by 1888, the British Government became hostile to it. In 1905, Bengal was partitioned to weaken the forces of nationalism in India. In 1906, communal electorates were conceded to the Muslims to drive a wedge between them and the Hindus. The tables were now turned, and the Muslims began to be favoured more than the Hindus. The third period starts with the birth of the Muslim League and lasts up to 1940. During this period, the Muslim League concentrated its demand on separate electorates for the Muslims, weightage for them in minority Provinces, communal veto and adequate representation in the Services. The fourth period begins in 1940, when the Muslim League finally decided to agitate for the formation of Pakistan under the astute leadership of Mr. M. A. Jinnah and it closes in 1947.

The first two periods which bring us up to 1906, when the Muslim League was formed, are dealt with in an earlier Chapter.¹ The main events of the third period, from 1906 to 1937, have already been dealt with during the course of the general narrative. Here they are reproduced briefly.

Muslim League Politics from 1906 to 1937 : The first session of the Muslim League was held in 1908. The League was established with the set purpose of promoting, among the Musalmans of

1. See Chapter VIII.

India, a feeling of loyalty to the British Government. In Morley-Minto Reforms, the Muslims were given separate representation. Soon after certain events, mentioned elsewhere, happened, which brought about a considerable shift in the Muslim League politics. The result of those events was that in 1918 at its Lucknow Session, the Muslim League passed its famous resolution, which changed its objective to the "attainment of the system of self-government..... by promoting national unity, by fostering public spirit among the people of India and by co-operating with the other communities." This brought the Muslim League and the Congress nearer and the result was the Congress-League Pact of 1916. The Congress accepted the separate electorates, weightage for Minorities and the communal veto to win Muslims on the side of the national forces. Partly as a result of the Lucknow Pact of 1916 and partly due to the Congress support to the Khilafat agitation, there was perfect accord between the two communities during the Non-Co-operation Movement of 1920-22. All this unity, however, proved temporary.

Hindu-Muslim Riots : The period from 1922 to 1931 is full of communal riots and wrangles in India. Both the bases of unity were now gone. The Non-Co-operation Movement was switched off in 1922. The Khilafat was abolished in Turkey, leaving nothing for the Muslims of India to fight for. From the days of the Congress-League Pact till the end of the Khilafat Movement, the Muslim League was not much heard of. It was thrown in the background. When the Khilafat Movement ceased, the League raised its head again to win popularity amongst the Muslims. During this period, many other communal bodies, like the Hindu Maha Sabha, were formed. The Government did nothing to quell the Hindu-Muslim riots. The British bureaucracy in India rather encouraged them. Now and then a Peace Conference was sponsored by the saner elements amongst both the communities, but no worthwhile result was achieved. No attempt was made to bring the communities socially nearer by destroying disruptive customs. The atmosphere was thus highly charged with communal ill-feelings when the Simon Commission visited India.

The Split in the Muslim League : There was a split in the ranks of the Muslim League before the arrival of the Simon Commission at the end of 1927. In his attempt to revitalise the Muslim League, Mr. M. A. Jinnah had called a Conference of Muslim Leaders at Delhi in March, 1927. In this conference the system of joint electorates was accepted as the best solution of the Hindu-Muslim problem, but it led to a dissension in the Muslim League itself. One section of the League was led by Mr. Jinnah, and the other, viz., the Punjab Muslim League, was headed by Sir Mohd. Shafi, who stood for separate electorates. When the Simon Commission arrived, it was boycotted by the Jinnah Group as well as the Congress and the other national Parties. But the Shafi Group decided to offer co-operation to the Simon Commission. In 1927, two separate

sessions of the Muslim League were held, one at Calcutta under the presidency of Mr. Jinnah, and the other at Lahore under Sir Shafi. The Jinnah Group even co-operated in drafting the Nehru Report and took an active part in the All-Parties Conference, but the Shafi Group rejected the Nehru Report altogether. An All-Muslim Parties Conference met at Delhi with the Aga Khan in the chair and decided to reject the Nehru Report.

Mr. Jinnah now saw the ground slipping from under his feet and left India in disgust for England and even thought of starting legal practice there. The nationalist Muslims left the League for good and the League reverted, once again, to the pre-1913 communal politics. The loyalist Muslims, who stood for separate electorates and offered co-operation to the Simon Commission, received encouragement from the Government. Birkenhead, then Secretary of State for India, wrote: "I should advise Simon to see at all stages all people, who are not boycotting the Commission, particularly Muslims and the Depressed Classes. I should widely advertise all his interviews with representative Muslims. The whole policy is now clear. It is to terrify the immense Hindu population by the apprehension that the Commission is being got hold of by the Muslims, and may present a Report, altogether destructive of the Hindu position, thereby securing solid Muslim support and leaving Jinnah high and dry."

(Hindu Muslim tension)

Jinnah accepts communal politics : There was, evidently, no leadership for Mr. Jinnah in the League on the basis of his progressive views. It was also too late to join the Congress which he had left in 1920. The Conservative circles of Britain also influenced Jinnah in accepting the communal politics. Any other course for him meant a direct clash with the Government, which in those days often meant jail.

Fourteen Points : On his return to India, a compromise was arrived at between Mr. Jinnah and the Shafi Group on the basis of his Fourteen-Point Programme for the League, which he presented at the special session of the Muslim League, held in September, 1929. These Points were : (1) The form of the future constitution should be federal with residuary powers vested in the Provinces ; (2) a uniform measure of autonomy shall be granted to all Provinces ; (3) all Legislatures shall contain adequate representation of Minorities without reducing the majority of any Province to a minority or even equality ; (4) in the Central Legislature, Muslim representation shall not be less than one-third ; (5) representation of communal groups shall continue to be by means of separate electorates ; (6) any territorial re-distribution shall not affect the Muslim majority in the Punjab, Bengal and the North-Western Frontier Province ; (7) full religious liberty shall be guaranteed to all communities ; (8) no bill or resolution shall be passed, if $\frac{3}{4}$ of the members of any community in the particular body oppose such a bill as injurious to that

community ; (9) Sind shall be separated from the Bombay Presidency ; (10) reforms shall be introduced in North Western Frontier Province and Baluchistan as in other Provinces ; (11) provision should be made in the constitution, giving the Muslims an adequate share in all services and in self-governing bodies ; (12) the constitution should embody adequate safeguards for the protection of Muslim culture, education, language, religion, etc. ; (13) no Cabinet, either Central or Provincial, should be formed without a proportion of Muslim Ministers of at least one-third ; (14) no change should be made in the constitution by the Central Legislature, except with the concurrence of the States, constituting the Indian Federation.

The Communal Award : These Fourteen points were a clear repudiation of the Nehru Report and were made the basic minimum of the demand on behalf of Muslims at the first Round Table Conference. At the Second Round Table Conference, Muslims, egged on by the Conservatives, stuck to these demands, with the result that there could be no compromise with Mahatma Gandhi on the communal issue. After the Second Round Table Conference, Mr. Ramsay Macdonald issued the Communal Award. It conceded to Muslims all that they had asked for.

Attempt at Unity again foiled : The Hindus had remained irreconciled to the Communal Award. The Poona Pact showed that the communal problem was not insoluble, provided there was a will to do so. Mahatma Gandhi was clapped in jail immediately on his return from the Second Round Table Conference. Civil Disobedience was again afoot. Due to the efforts of leaders like Maulana Abul Kalam Azad, Dr. Syed Mahmud, Maulana Shaukat Ali and Pt. Malviya, a Unity Conference was held at Allahabad in November, 1932. Leaders of Hindus, Muslims, Sikhs and other communities were invited. Two preliminary sessions were held. In the third session, held on December 23, 1932, an informal agreement on the basis of joint electorates with reservation of seats was reached. In the Unity Conference, Muslims accepted 32% representation in the Central Legislature. The separation of Sind from Bombay was also agreed upon, but there was to be no drain on the Central revenues in the process involved.

It was at this moment that Sir Samuel Hoare announced in London that the British Government had decided to accord 33% representation to Muslims in the Central Legislature and to separate Sind from Bombay with adequate financial aid from the Central Government. It was more than the Muslims had themselves agreed upon at the Unity Conference. The Muslim support to the Conference soon fizzled out and the entire efforts of the Unity Conference ended in fiasco. The Congress failed to take a bold stand on the Communal Award and passed the meaningless resolution of 'neither accepting, nor rejecting' the Award to placate the Muslims.

In the Act of 1935, most of the demands of the Muslim League, as contained in the Fourteen Points of Mr. Jinnah were conceded ! The programme sketched in those Points remained the main plank of the Muslim League till 1940, when it finally switched its demand on to Pakistan.

Seeds of Pakistan : The idea of Pakistan, as a separate State for the Muslims of India, was perhaps conceived first by Dr. Mohd. Iqbal. In his presidential speech to the annual session of the Muslim League at Allahabad in 1930, he expressed his dream of "a consolidated North West Indian Muslim State." But at that time, no serious thought was given to the implication of his speech and it was probably dubbed as the expression of a philosopher's dream. But the idea gained force among the Muslim students at Cambridge under the lead of Mr. Rahmat Ali. He circulated pamphlets to the members of the British Parliament, claiming for the Indian Muslims a State of Pakistan, comprising the territories of the Punjab, Afghan Province of North Western Frontier Province, Kashmir, Sind and Baluchistan. Mr. Yusuf Ali regarded the whole idea as "a student scheme" and Zaffarullah Khan characterized it as "chimerical and impracticable". Even Mr. Jinnah did not accept the idea till as late as 1940. Writing in '*Time and Tide*', London, dated January 19, 1940, he said, "In India there are two nations who both must share the governance of their common motherland." But ~~after three months~~, he was altogether for Pakistan.

Causes which led to the demand for Pakistan : Perhaps, the one important cause, responsible for a sudden change in Mr. Jinnah, was the refusal of the Congress to form Coalition Ministries with the Muslim League in Provinces where the Congress was in a majority. Secondly the Muslim League was disappointed with the result of the general elections of 1936-37 because of its failure to capture power in any of the four Muslim-majority Provinces of the Punjab, North Western Frontier Province, Sind and Bengal. The future of the Muslim League looked dark indeed. The League began to realize that a new programme and a new slogan had to be invented to capture the imagination of the Muslim masses. Thirdly some leaders of the Hindu Mahasabha made utterances, which implied that the future of Muslims in a United India was hardly bright. In 1937, Mr. V. D. Savarkar was freely preaching the gospel of a *Hindu Rashtra*. He dubbed the Congress as anti-Hindu and pro-Muslim. He advised the Hindus to capture power from the Congress and to establish the foundations of a true Hindu Raj. He said that India was inhabited, not by one homogeneous nation ; but by two nations—the Hindus and the Muslims. The Muslims were clearly told that there was no future for them in India except as a minority. Such utterances of Mr. Savarkar were corroborated by similar statements of some other prominent leaders of the Hindu Maha Sabha, like Bhai Parmanand. In fact, these utterances were no more than a reaction to the

gospel of hate and ill-feeling preached by the Muslim League ; yet they were sufficient to create apprehensions in the minds of Muslims. The Hindu 'touch-me-not' customs, which implied a virtual social boycott of Muslims by the rank and file of the Hindus, were mortally resented by the middle-class Muslims. Some Muslims honestly and genuinely believed that their religion, language and culture could not be safe in a United India, where the Hindus were bound to possess a predominant position because of their larger number. Fourthly, some Muslims believed that the establishment of a Muslim State in India was the first step to the fulfilment of their dream of Pan-Islamism. Pakistan might become a nucleus for a movement to free all Islamic countries in Asia from foreign yoke, thus paving the way for some sort of a confederation of the Islamic countries in the Near East at some future date.

Fifthly, the Muslim leaders were very much upset by the 'Muslim-mass-contact-movement,' which was started by the Congress to win the votes of Muslims during and after the general elections of 1937. The Muslim leaders feared that the Muslim masses were coming under the influence of the Congress because of the economic programme placed by the Congress before them. Even men like Dr. Iqbal took this movement as a threat to their culture. Sixthly, the demand of Pakistan was the inevitable next step to the type of politics the Muslim League had all through been pursuing. The gospel of separatism was bound to lead to the demand for separation. Seventhly, the Sudetan Movement in Czechoslovakia also influenced the Muslim League a good deal in putting up its demand of Pakistan and in the technique that the League followed to achieve that objective. Sudetan land was separated from Czechoslovakia and incorporated in German Reich in October, 1938. Eighthly, only in a separate State, the highest personal ambitions of some of the leaders of the Muslim League could be satisfied ; in a United India, the fulfilment of those ambitions might not have come so soon and so surely. And lastly, there were good grounds for the leaders of the Muslim League to believe that the British authorities could not but be sympathetic to such a demand. If Pakistan was implicit in the Muslim League politics, it was only an inevitable result of the divide and rule policy of the Britishers.

Two-Nation Theory : The demand for Pakistan was made for the first time in a resolution of the Muslim League at its Lahore session, held on March 23, 1940, which runs as follows:—"Resolved that it is the considered view of this session of the All-India Muslim League that no constitutional schemes would be workable in this country or acceptable to Muslims unless it is designed on the following basic principles, viz., that geographically contiguous Units are demarcated into regions which should be constituted with such territorial readjustments as may be necessary, that the areas in which the Muslims are numerically in majority should be grouped to constitute independent states".

The basis of this demand was the famous "Two-Nation Theory" which was hinted at by Sir Wazir Hussain in his presidential address at the Bombay session of the Muslim League in 1936. He said, "The Hindus and Musalmans inhabiting this vast continent are not two communities, but should be considered two nations in many respects."¹ Mr. M. A. Jinnah developed this Theory at the Lahore Session thus: "The problem in India is not of an inter-communal character but manifestly of an international one and it must be treated as such.....they (Hinduism and Islam) are not religions in the strict sense of the word, but are, in fact, different and distinct social orders and it is a dream that the Hindus and the Muslims can ever evolve a common nationality.....The Hindus and Muslims belong to two different religious philosophies, social customs and literatures. They neither intermarry nor inter-dine together and indeed they belong to two different civilisations which are based mainly on conflicting ideas and conceptions. It is quite clear that Hindus and Musalmans derive their inspiration from different sources of history. They have different epics, different heroes and different episodes. Very often, a hero of one is a foe of the other, and likewise their victories and defeats overlap. To yoke together two such nations under a single State, one as a numerical minority and the other as a majority, must lead to growing discontent and final destruction of any fabric that may be so built up for the Government of such a State. The history of the last twelve hundred years has failed to achieve unity and has witnessed during ages India always divided into Hindu India and Muslim India. The present artificial unity of India dates back only to the British conquest and is maintained by the British bayonet"... "The Musalmans are not a minority as is commonly known and understood. They are a nation according to any definition of a nation, and they must have their homeland, their territory and their State". In 1939, Mr. Jinnah had already declared that democratic parliamentary institutions were not suitable to India because of the ignorance of her masses. Elucidating the demand for Pakistan still further, Mr. Jinnah said that all injustice to minorities in both the States will stop because of the fear of retaliation by the other State.

The demand for Pakistan invoked bitter protests from all non-Muslim quarters, including the nationalist Muslims. It is no use going into the advantages and disadvantages of the formation of Pakistan at this stage. We may, however, examine some of the issues involved in the acceptance of the Two-Nation Theory.

Basis of the Theory : The Theory is based on a famous dictum of J. S. Mill that the territories of a State should ordinarily coincide with that of a nationality. After the World War I, the Theory became very popular in Europe, and many old States were split up and new ones created on the basis of this Theory. The

1. Mohd. Noman : Muslim India, p. 326.

usual arguments advanced in favour of this Theory, which were owned by the Muslim League, are : that an independent State is conducive to the development of the distinctive language, religion and culture of a separate nationality, and that in such a State there are no inter-nation jealousies, no quarrels, no wrangles, no oppression of a majority over minorities.

Criticism of the Theory : The Theory of conceding a separate State for every nationality has been exploded in recent times. Lord Acton regards it as dangerous. This principle will split the world into eight thousand, if not more, independent States instead of the present eighty. The Sikhs and the Harijans are probably entitled to claim separate States out of India on the basis of this Theory. International jealousies and wrangles are already common enough. Multiplication of the number of the States will lead to further international chaos. The age of small Nation-States is gone. The problem of defence in a modern age is beyond the competence of a small State. All nationalities are not so politically conscious as to be able to put an independent set-up. Expenditure on administration will increase by duplication because every small State will have its own organs of government. There will be no chance for a backward nationality to develop through contact with a superior nationality. The best culture is a composite culture, which can only develop if there is a multinational State.

Application of the Theory to India : The Muslim League argued that the Hindus and Muslims were two nations because they had different religions. This proposition is politically unsound. A nationality means persons having a feeling of oneness among them. Such a feeling may grow because of any or some or all of the factors like common residence, common language, common religion, common race, common history, common political or economic aspirations. In India, no doubt, the Hindus and the Muslims had different religions but they had common residence, common inter-twined culture, common economic and political life for more than ten centuries past. The elements making for unity work much more than the elements which divided. If Russia could be a single nation with more than a dozen religions, Switzerland with four official languages and U. S. A. with different races, why not India ?

The game of the Muslim League was successful in India, primarily because of the ignorance of the Muslim masses who were excited in the name of religion, and because of the divide and rule policy of the British Government. The elements making for unity were sufficient, provided there was a will to live together and there was no third party to accentuate the differences.

Pakistan as a solution of the Minority Problem : Pakistan was, primarily, demanded as the best solution of the

minority problem. But that problem still remains. There is still a considerable number of Muslims in India and Hindus in Pakistan. "The idea of treating minorities as hostages for the fair treatment of one's co-religionists" in another State implies, in the words of Dr. Beni Prasad, a 'clean shift of the basis of politics from civilization to barbarianism.' India is trying to solve the minority problem by observing all the well-established principles of a secular State. Pakistan has decided to become an Islamic State, in which the minorities can never get equal treatment as citizens. And it may be too much to say that the minorities, especially the Muslims, are absolutely satisfied in India. So the problem remains.

Other Communal bodies : As a reaction to the policy of the Muslim League, many other communal organizations arose in the country after the Montford Reforms, e.g., the Hindu Maha Sabha, the Rashtriya Swayam Sevak Sangh, the Akali Party, the Scheduled Castes Federation. Some of these Parties are dealt with elsewhere ; here it will suffice to say that these also contributed in varying degrees to increasing the communal tension in India.

WHY PAKISTAN WAS FORMED

When the Cabinet Mission Plan was made public, some people felt that the division of the country might be averted. The Plan was announced on May 16, 1946. The Mission found the formation of Pakistan undesirable and put forward a scheme for a United India. But by the end of the year 1946, it became clear that Mr. Jinnah would not be satisfied with anything less than Pakistan, and that the British Government would not entertain the idea of coercing Mr. Jinnah to accept a United India. We give below some of the causes which were responsible for the formation of Pakistan :—

(i) **The only basis for voluntary compromise between the Congress and Muslim League :** On June 3, 1947, the British Government announced that an agreement had been reached between the Congress and Muslim League on the basis of Pakistan and the Britishers had decided to quit India on the 15th August, 1947. In his broadcast speech on June 3, 1947, Lord Mountbatten stated that he still believed that a "unified India would be by far the best solution of the Indian Problem. But as there was no possibility of an agreement between the Parties on any other basis than Pakistan, they had reluctantly agreed to divide India."

(ii) **Divide and Rule policy of the British Government :** From the time of Lord Minto, the British Government had tried its best to create a rift between the Hindus and Muslims. This policy was continued and strengthened in subsequent years, as is clear from the increasing amount of communalism introduced into the Acts of 1909, 1919 and 1935. After fomenting communalism to

such an extent, it was impossible for the Britishers to avoid its logical implications.

(iii) **To weaken India :** In 1929, the Congress passed its famous resolution for Complete Independence. The eighteen years that followed witnessed bitter feelings against the Government. Even the most optimistic Britishers could not anticipate during 1942-45 that India would decide to remain a Dominion after becoming independent. The British reaction, therefore, was that, if an independent India was going to be an unfriendly India, it would be better to have a weak India. The formation of Pakistan would leave India weak, and there would be scope to play one part of the sub-continent against the other.

(iv) **Britain too weak after World War II to force United India on Muslim League :** There are some writers who feel that the Labour Government which came to power in 1945 really preferred a United India, but it found itself too weak to force Mr. Jinnah into submission. It may be recalled that Mr. Jinnah used the strongest possible language against the British Government after the Simla Conference. After the 1945-46 elections, Mr. Jinnah was quite conscious of the popular appeal that Pakistan made to the Muslims.

Communalism in free India : The stress and sufferings undergone by the Hindus who came from Pakistan in the wake of Partition are painful indeed. Some communal bodies like the Hindu Maha Sabha are trying to make capital out of their troubles. 'Akhand' Hindustan is still the ideal of these bodies. They even think of conquering Pakistan some day. They advocate a 'stiff' dealing with Muslims and believe in the policy of treating them as 'hostages' for the ill-treatment, which is meted out to the Hindus in Pakistan. They dream of a Hindu Raj and are angry with the Government for its policy of Secularism.

This is the new form of communalism with which India is faced today. Pt. Jawahar Lal Nehru rightly feels that all this talk of Hindu Raj "drags us down in the eyes of the world." Secularism, as introduced into our Constitution, is in keeping with the principles of the progressive States, and is the least that a majority should do for the minorities. The recent anti-Ahmediya agitation in Pakistan which has resulted in the death of thousands of Muslims by the Muslims, is a sample of the outcome of letting loose the forces of communal fanaticism. There is no future for India or Pakistan except on the basis of Secularism and tolerance towards the minorities.¹

1. A part of the information contained in Chapter VIII and the earlier part of this Chapter is based on the bold and thought-provoking Presidential address of G. N. Singh to the Indian Political Science Conference, 1942 (reproduced in April-June, 1943 Issue of the Indian Political Science Journal) on the "Birth and growth of Muslim Nationalism."

CHAPTER XXIX

MOUNTBATTEN PLAN, PARTITION AND INDEPENDENCE ACT

Britain decides to Quit India : The communal riots became the order of the day as a result of the policy of Direct Action started by Muslim League on August 16, 1946. The Government could not stop the orgy of violence and destruction of property. The European officers in the service of the Indian Government were apathetic. The National Government proved helpless because the Muslim League Members encouraged rowdyism on the part of Muslims. In the past, the British Government had always succeeded in suppressing riots, but now the attitude of the British officers was indifferent. Under these circumstances, the British Government decided to make India free. On February 20, 1947, Mr. Attlee declared in the House of Commons, "The present state of uncertainty is fraught with danger and cannot be indefinitely prolonged. His Majesty's Government wish to make it clear that it is their definite intention to take necessary steps to effect the transference of power to responsible Indian hands by a date not later than June, 1948." This was a momentous statement. Mahatma Gandhi regarded it, as "the noblest act of the British nation." But it was also added that, if by June, 1948, a constitution was not framed by a fully representative Constituent Assembly, "His Majesty's Government will have to consider to whom the power of the Central Government in British India should be handed over on the due date ; whether as a whole to some form of Central Government for British India *or in some areas to the existing Provincial Governments*, or in some other way as may seem most reasonable and in the best interests of the Indian people." The italicized part of this statement implied a clear acceptance of the principle of Pakistan. It was also announced that Lord Wavell would be replaced by Lord Mountbatten, who was "entrusted with the task of transferring to Indian hands responsibility for the Government of the British India."

Gandhiji opposed to Pakistan : Mahatma Gandhi complimented the British Government on fixing the date for surrendering power, but shuddered at the thought of a possible division of the country and declared, "Even if the whole of India is in flames, it will not bring Pakistan." In another context, he said, "Pakistan would be made on my dead body." He saw the possibility of chaos and anarchy in India after the Britishers had left and yet pleaded

with the Government to expedite the transference of power because in his opinion the continuance of the British rule was an encouragement to the mischievous elements in the country.

THE MOUNTBATTEN PLAN

Lord Mountbatten arrived in India at the end of March, 1947 and immediately plunged into the task entrusted to him. Starting with Mahatma Gandhi, he held consultations with all important political leaders of India and found that a compromise between the Congress and Muslim League was impossible on the basis of a United India, which led him to the alternative of achieving agreement on the basis of a division. If the principle of Pakistan was accepted by the Congress, the rest was a matter of details. During his consultations with the Indian leaders, he found a certain measure of agreement between the Congress and the Muslim League on the question of Pakistan. After clearing his mind about the broad outlines on which settlement could be arrived at between the two Parties, he proceeded to London in May, 1947 to have urgent consultations with the British Government and to get their approval to the lines in which the country could possibly be divided. On June 3, 1947, immediately after his return to India, Lord Mountbatten made public his Plan for solving the Indian deadlock. Before the Plan was issued to the public, Lord Mountbatten had obtained the consent of the Congress leaders and Mr. Jinnah to it.

Terms of the Plan : The Congress accepted the principle of self-determination for those parts of India, which did not desire to remain within the Indian Union, provided that right was also granted to those parts of the Provinces, which desired to remain in the Indian Union. According to this principle, the Punjab, Bengal, Sind, Baluchistan, N.W.F. Province and the Muslim majority districts of Sylhet in Assam were given the right to decide whether or not to remain in the Indian Union. The Hindu majority districts of Bengal and the Punjab were also given this right. In the Punjab and Bengal, the representatives of the Muslim and non-Muslim majority districts of their respective Legislative Assemblies were given the right to decide separately whether they wanted to join India or Pakistan. In N. W. F. Province and the Muslim majority district of Sylhet in Assam, this was to be decided by a referendum by an adult suffrage. In Sind, the Assembly was to vote as a whole for the decision. In Baluchistan, a joint meeting of the Representative Institutions was to be held for the purpose. In the event of a decision for the partition of the Provinces of the Punjab, Bengal, and Assam, independent Boundary Commissions were to be appointed to fix the dividing lines between the two parts of the Provinces. An agreement was also to be made for the division of assets and liabilities between the two Dominions, viz., the Indian Union and Pakistan. Both the States were to be accorded

the status of a Dominion in the beginning, with full right to leave the British Commonwealth at a later date, if they so chose.

We have already noted that Mahatma Gandhi had pleaded for a transfer of power earlier than June, 1948. Mountbatten also came to the conclusion that, in order to avoid some irreparable loss, the transfer of power should take place at once. So it was also announced with the Plan that the Government was contemplating the setting up of independent States at a much earlier date and they wanted to introduce legislation during the current session of the British Parliament for that purpose.

As the Plan was accepted by the Congress and the Muslim League, Lord Mountbatten proceeded to implement the same immediately. The Hindu majority districts of the Punjab and Bengal decided to remain with the Indian Union. The N.W.F. Province, Sind, Baluchistan and the Muslim majority districts of the Punjab, Bengal and Sylhet decided to join Pakistan.

Why the Congress accepted Pakistan : The Indian National Congress is criticized in certain quarters for accepting Pakistan. The question is often raised : how far was the Congress justified in agreeing to the formation of Pakistan? Before we attempt an answer to this question, it may be noted that it was no pleasure for the Congress leaders to accept Pakistan. On June 3, 1947, Mr. Jawahar Lal Nehru, while recommending the proposal for Partition to the people, said, "For generations we have dreamt and struggled for a free, independent and united India. The proposal to allow certain parts to secede is painful for any of us to contemplate. Nevertheless, I am convinced that our present decision is the right one." This shows that the Congress accepted Pakistan as a *necessary evil*. The following are some of the causes which led the Congress to that decision :

1. The only way to check Hindu-Muslim riots : The policy of Direct Action which was started by the Muslim League on August 16, 1946, resulted in a great loss of life and destruction of property. With the entry of the Muslim League in the National Government in October, 1946, the Muslim League fanatics received further encouragement from the leaders of the Muslim League in authority, and the state of law and order worsened. A retaliation started in some Hindu-majority Provinces, which was no comfort to the Congress leaders. The British officers, in general, were callous, if not hostile. While referring to these riots, Mr. Nehru said, "The interim Government was able to do nothing to protect the people. The horrible riots in the Punjab, Bengal and elsewhere were no isolated riots. They were planned attacks. It seemed the administration had broken down and there was no authority left in the country to enforce order".¹ While referring to the British officers, he said, "The British are no longer interested because

1. Banerjee : The Making of the Indian Constitution, p. 474.

they are leaving. This probably explains why some officers asked the victims to go to me or Sardar Patel for help. They are not desirous of shouldering any further responsibility and many have become callous."¹ In another statement, Mr. Nehru indignantly asked, "How is it that the British officers who coped with the Civil Disobedience Movements in the past, were unable to cope with the present disturbances?"² Some British officers even encouraged these riots, and wanted to prove thereby that the Indians were not fit for freedom and would cut each others' throats when the Britishers left. The most urgent need of the time was to arrest this drift towards anarchy and chaos. Partition was considered better than the murder of innocent citizens. The Congress leaders felt that there was no other way out. It was, however, an irony of fate that the Partition brought even a worse form of human butchery in its train.

2. As a price for immediate Independence : It appears that the Congress could wait no more for Independence after 1947. In the opinion of the Congress, any further stay of the British officers would mean a greater calamity to India. The British officers were preparing the Princely India for creating mischief. Lord Wavell pitched the Muslim League against the Congress in the National Government. In the Departments under the Muslim League Members of the Interim Government, Muslims were being placed in charge of all key-posts. Sardar Patel "noticed that Muslim officials, right from the top down to the *chaprasis*, barring a few honourable exceptions, were all for the Muslim League." Pakistan was the least price demanded by the League from the Congress to achieve its objective. Pandit G.B. Pant, while referring to this decision, said, "The choice today was between accepting Pakistan or committing suicide." Sardar Patel said that if Pakistan was not accepted, India might get divided into many Pakistans.

3. A smaller unified and strong India better than a bigger and weak India : Pandit Pant said, "It (acceptance of Pakistan) would assure an Indian Union with a strong Centre, which could ensure progress and help the country take her rightful place in the world. In the Indian Union, the Two-Nation Theory would not be tolerated and every citizen would have to give absolute and implicit loyalty to the State."³ Sardar Patel said that they still "had 75 to 80 percent of India which they could develop according to their genius and make it strong...that they had now a great opportunity to develop the three-fourths of India."⁴ He also said, "If Muslims are forced to stay in the Union, no progress and planning will be possible."⁵

1. Banerjee : Making of the Indian Constitution, p. 477.

2. Ibid, p. 474.

3. Ibid, p. 469.

4. Ibid, p. 480.

5. Ibid, p. 475.

4. Acceptance of 'truncated' Pakistan by Jinnah : Pakistan, as accepted by Mr. Jinnah, was much smaller than the Pakistan, he had aimed at. The June 3, Plan gave Jinnah no better Pakistan than the one which he had once described, as "mutilated, moth-eaten and truncated". The Hindu-majority areas of Bengal and the Punjab were free to join India. There was no mention of the demand for a corridor between the Western and Eastern Pakistan. Right from the days of the C. R. Formula of 1944, some Congressmen had made up their mind to concede such a Pakistan.

Purshottam Das Tandon against : Shri Purshottam Das Tandon bitterly attacked the Congress leaders for accepting Pakistan. At the session of the All-India Congress Committee held on June 14, 1947, he opposed the acceptance of the Mountbatten Plan and said, "Acceptance of the Resolution will be an abject surrender to the British and the Muslim League..... You must reject this Resolution (which has been passed by the Working Committee)...The decision of the Working Committee was an admission of weakness. He said that the reasons which, even on their own admission, had persuaded the Working Committee to propose the Resolution were that they were faced with difficulties, difficulties of administration due to the obstructive tactics of the League, to the large scale disturbances that had taken place in the country, and to the fact that no agreement could be reached with the League. But other countries had to encounter similar obstacles on the road to freedom, particularly the U.S.A. We would have to face many more difficulties than had come up hitherto. The Working Committee had accepted the Plan in weakness and out of a sense of desperation.....Those that were weak deserved no sympathy."

THE INDIAN INDEPENDENCE ACT

On the basis of the Mountbatten Plan, the Indian Independence Act was passed by the British Parliament in July, 1947. The Act constituted two independent States of India and Pakistan with effect from August 15, 1947.

Provisions of the Indian Independence Act, 1947 : The following were the main provisions of the Act. Firstly, two independent Dominions were to be created from August 15, 1947 and the Act provided for the complete transfer of control to Indian hands from that date. Secondly, the territories of the Indian Dominion included Bombay, Madras, U.P., C.P., Bihar, Eastern Punjab, Western Bengal, Assam minus the Muslim majority areas of the district of Sylhet, Delhi, Ajmer-Merwara and Coorg. The territories of Pakistan included the remaining parts of India; namely, the Provinces of Sind, N.W.F. Province, Western Punjab, Eastern Bengal, the Muslim majority areas of the district of Sylhet in Assam and Baluchistan. For demarcating the respective territories of the

Indian Union and Pakistan in the Provinces of Punjab and Bengal, Boundary Commissions were to be set up by the Governor-General, consisting of two judges from each of the Dominions with Sir Cyril Radcliffe, a British lawyer, as the Chairman. These Commissions were immediately set up. As the Indian members of the Commissions did not agree on the boundary lines, Sir Radcliffe gave his award and decided the issue for the time being. Thirdly, the power in each Dominion was transferred to its Constituent Assembly, which became fully sovereign from the 15th August, 1947. The Constituent Assemblies were made absolutely free to draw whatever Constitutions they liked for their respective Dominions and were given the right even to sever their countries from the British Commonwealth of Nations. Fourthly, the Governor-General of each Dominion was to be appointed from August 15, 1947, on the advice of the Dominion Cabinet. Under this power, Lord Mountbatten was nominated by the Congress for India, and for Pakistan the Muslim League named Mr. Jinnah. The Governors-General became constitutional heads. Fifthly, until the new constitutions were framed, the Act of 1935 was to govern both the Centre and the Provinces with some necessary alterations and modifications. The Governors in the Provinces were to become purely constitutional heads and were left with no discretionary powers. They were to follow the advice given by their Ministers under all circumstances. The Governors of the Provinces were also to be nominated by the Dominion Cabinets. Sixthly, the provisions of the Statute of Westminster of 1931 were to apply to both the Dominions. The Secretary of State and the India Office were to stop functioning from August 15. The Indian and Pakistan affairs were to come, thereafter, under the Secretary of the Commonwealth Relations. Seventhly, during the transition period, the functions of the Central Legislatures of the two Dominions were to be carried on by their respective Constituent Assemblies. The British Government no longer possessed the right to disallow laws passed by the Legislatures of the new Dominions. Eighthly from August 15, 1947, all rights of Paramountcy of the British Crown over the Indian States were to lapse. The Indian States were free to join either the Indian Union or Pakistan or even to declare themselves absolutely independent.

With the passing of this Act, India and Pakistan entered the community of free Nations. In the Chapter on 'Indian States', we have noted the grave implications of some of the States declaring themselves absolutely independent. Hence this provision of the Independence Act was generally resented by the Indian leaders. As for the rest of its provisions, the Act meant the cessation of every form of control of the British Government over Indian affairs. The Dominion Status meant no limitation whatsoever on the full and final sovereignty of the respective Constituent Assemblies.

CAUSES OF INDEPENDENCE

The grant of Independence to India was one of the greatest events of History. It was after about 62 years of struggle that the Indian National Congress had achieved its objective. This is comparatively a shorter period as against a similar struggle for Home Rule in Ireland. It was for the first time in History that, such a huge territory, with so big a population had achieved Independence in such a short time with so little sacrifice. Again, it was for the first time that a nation had won its Independence by non-violent means. Another aspect of this unique event was that Britain abdicated power so gracefully. We may here assess some of those causes which led England to surrender power over India.

1. Strength of the Indian National Movement : The foremost cause for the achievement of Independence, of course, was the strength of Indian nationalism. The World War II, the Quit India Movement, the speeches of the Indian leaders after their release before the Simla Conference of June 1945, the I.N.A. Trial—all these events had intensified the spirit of nationalism in India. The mood of the nation during the Quit India Movement, was summed up by Mahatma Gandhi in the slogan : "do or die". After the War, the cry of the nation was : "now or never".

2. Britain very much weakened by World War II : The World War II left England weak. Her economy had been disorganised. Huge industries, which were her pride, had been more or less destroyed. England was now reduced to the position of a second rate power. The English hands were too weak to hold down India against her will after 1945.

3. Progressive Movements in Asia : The Western World found the whole of Asia awake after the War. The Asian people realised that they were being exploited by the Western nations and that they had every right to be free. Progressive movements had started in most of the Far and Middle East countries. India was the most progressive among them. The grant of Independence to India was a bowing down to the spirit of resurrection going on in the whole of Asia.

4. Doubt about the loyalty of the Indian Army : The stories about the Indian National Army, the I.N.A. Trial, the revolt of the Ratings in the Indian Navy in Calcutta, Madras and Karachi, which started in February, 1946, and the strike in the Indian Air Force at Ambala had sown the seeds of revolt in the Indian Army against the British rule. England was extremely alarmed over these developments. The British officers seriously began to doubt the loyalty of the Indian Armed Forces to the British rulers. Moreover England could no longer spare enough British soldiers for India to suppress popular upheavals. She needed her shrunken man-power for reconstruction and rehabilitation at home.

5. The coming of Labour Party in power : The coming of the Labour Party in power in 1945, with an absolute majority for the first time, was an event which did make a difference in the final conferment of Independence on India. Of course, Independence was not wholly due to the coming of the Labour Party in power. In 1923 and 1931 India was disillusioned by the performances of the Labour Party, although in all fairness, it must be admitted that the Party, not being in absolute majority could not have had its way about India. But nobody expected that Churchill could have allowed or suffered this transference of power in such a peaceful manner. Since the time of the Cabinet Mission, Churchill continued to blame the Labour Party for allowing the British Empire to dwindle.

6. Keeping India in bondage no more profitable : After the War, imports from England to India had considerably fallen. India had enormously industrialised herself in many key as well as subsidiary industries. The Britishers had come and stayed in India primarily, for economic gains. It was realised after the War that, by keeping a friendly India, England might be able to continue economic ties with her in a much more profitable manner, than by keeping India sore and sullen.

7. Compromise over Pakistan : The Congress paid the highest price of Pakistan for the achievement of Independence. Pakistan was conceded even against the wishes of the Father of the Nation. As for Mr. Jinnah, he accepted the "mutilated, moth-eaten and truncated" Pakistan, which he had so vehemently rejected in the past. But for this compromise over Pakistan between the Congress and the Muslim League, the dawn of Independence would have been delayed.

Handwritten notes:
 Pakistan was conceded
 against the wishes of
 the Father of the Nation
 As for Mr. Jinnah, he
 accepted the "mutilated,
 moth-eaten and truncated"
 Pakistan, which he had
 so vehemently rejected
 in the past.
 But for this compromise
 over Pakistan between
 the Congress and the
 Muslim League, the
 dawn of Independence
 would have been
 delayed.

PART V

PRESENT CONSTITUTION OF INDIA



CHAPTER XXX

CONSTITUENT ASSEMBLY AND SALIENT FEATURES

Democracy gives a citizen, not only the right of running the government of his country, but also the privilege of framing its constitution which is generally done by a Constituent Assembly. A Constituent Assembly means a constitution-making body, i.e., an assembly or a convention, set up by the people of a country for the purpose of framing its constitution. America was the first country in modern times to elect such a body called the Federal Convention, in 1787, which made her present Constitution. A similar method was followed in France during the year 1789-1791, when the National Constituent Assembly of the country gave her a new constitution. Since these times, the setting up of a Constituent Assembly is regarded as a normal process by which an independent democratic country frames its constitution.

Evolution of the idea of Constituent Assembly in India : The idea of a Constituent Assembly was implicit in the demand for Swaraj made by the Indian National Congress as early as 1906. In 1922, Mahatma Gandhi put forward the idea that the future of the country should be determined by the freely chosen representatives of the nation. But it was only in 1934 that the Indian National Congress officially adopted the demand of a Constituent Assembly for framing India's constitution. In 1936 at its Faizpur session, the Congress resolved, "The Congress stands for a genuine democratic State in India where power has been transferred to the people as a whole and the Government is under their effective control. Such a State can only come into existence through a Constituent Assembly having the power to determine finally the constitution of the country." In 1938, Mr. Jawahar Lal Nehru wrote, "The National Congress stands for Independence and a democratic State. It has proposed that the constitution of a free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise. That is the democratic way and there is no other way short of revolution which can bring the needed result. An Assembly so elected will

represent the people as a whole and will be far more interested in the economic and social problems of the masses than in the petty communal issues which affect small groups. Thus it will solve without much difficulty the communal and other like problems." The demand for a Constitution Assembly was repeated in the historic statement of the Working Committee of the Congress of September 14, 1939. But the Government did not pay any heed to it. It required the shock of the World War II to make the British Government realise that Indians would not be satisfied with anything less. The substance of the demand was conceded in the August, 1940 Statement of the Government, which admitted that the "framing of a constitutional scheme should be primarily the responsibility of Indians themselves." The Cripps' Plan of 1942 contained the first concrete proposal on the part of the British Government "to set up a constitution-making body charged with the task of framing a new constitution for India," immediately after the War, consisting of Indians alone. The Cripps' Proposals, as we already know, were found totally unacceptable and inadequate by the progressive elements in India. The Labour Government which came into power in 1945 marked some change in the attitude of Britain towards India. On March 15, 1946, Mr. Attlee, the Labour Prime Minister, categorically admitted the right of Indians to frame their own constitution. The Constituent Assembly which has framed the present Constitution was set up in 1946 under the Cabinet Mission Plan.

The composition, method of election and powers of the Constituent Assembly have been described in details in an earlier chapter. Out of its total membership of 389, as envisaged by the Plan, elections were held, to start with, only for 296 members representing the British India. 93 seats allotted to the Indian States were not filled. The representatives from the British Indian Provinces were elected by the members of each Provincial Legislative Assembly community-wise (General, Muslims and Sikhs) through the system of proportional representation by means of a single transferable vote. Out of the total of 296 seats allotted to the British India, the Congress captured as many as 211 and the Muslim League 73.

The Constituent Assembly, when it met for the first time on December 9, 1946, was not a sovereign body. Its powers were limited in many ways. It was bound by the provisions of the Cabinet Mission Plan and was subject to the over-riding authority of the British Parliament. It had to follow the prescribed procedure. As the Muslim League did not take part in its deliberations, it was not even a fully representative body. Moreover, the members who took part in its work were indirectly elected by the Provincial Legislative Assemblies, set up under a very limited franchise as permitted under the Act of 1935. Despite all these limitations, the Indian National Congress, which was represented by 211 out

of 233 participating members, wisely decided to push on with the work of constitution-making. On December 11, Dr. Rajendra Prasad was elected as its permanent chairman. On December 13, Mr. Jawahar Lal Nehru moved the "Objectives Resolution," which was passed on January 22, 1947 and runs as follows :—

"The Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent, Sovereign Republic and to draw up for her future Government a constitution :

"WHEREIN in the territories that now comprise British India, the territories that now form the Indian States and such other parts of India as are outside British India and the States, as well as such other territories as are willing to be constituted into the independent, sovereign India, shall be a Union of them all ; and

"WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter, according to the law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration save and except such powers and functions as are vested in or assigned to the Union or as are inherent or implied in the Union or resulting therefrom ; and

"WHEREIN all power and authority of the sovereign, independent India, its constituent parts and organs of Government, are derived from the people ; and

"WHEREIN shall be granted and secured to all the people of India justice, social, economic and political, equality of status, of opportunity and before the law, freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality ; and

"WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes ; and

"WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations ; and this ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of the world peace and the welfare of mankind".

Before its transformation into a fully sovereign body on August 15, 1947, the Constituent Assembly had also set up various Committees, e. g., the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee, the Advisory Committee on Minorities and Fundamental Rights, Committees on Chief Commissioners' Provinces and Financial Relations between the Union and the States and the Advisory Committee on

Tribal Areas to report on the various aspects of the Constitution. The reports of these Committees were then considered and a Drafting Committee, with Dr. Ambedkar, the Law Member of the Government of India, as chairman, was appointed on August 29, to give a legal form to the decisions embodied in the reports. The Draft Constitution was submitted to the Constituent Assembly on Nov. 4, 1948. It was then discussed clause by clause, and was finally enacted, with suitable amendments, on November 26, 1949. The new Constitution was inaugurated on January 26, 1950 to perpetuate the memory of our Independence Day, which had continuously been observed on that day every year from 1930 to 1947.

SALIENT FEATURES OF THE CONSTITUTION

(i) **Sovereign Democratic Republic** : The preamble of the Constitution proclaims India to be a Sovereign Democratic Republic and runs as follows :—

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens,

JUSTICE, social, economic and political ;

LIBERTY of thought, expression, belief, faith and worship ;

EQUALITY of status and of opportunity ; and to promote among them all ;

FRATERNITY assuring the dignity of the individual and the unity of the Nation ;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE OURSELVES THIS CONSTITUTION".

India is sovereign because she recognises no outside authority over herself. India's membership of the Commonwealth of Nations in no way lessens her sovereignty. India can leave the Commonwealth whenever she likes. Our Constitution is democratic because sovereignty resides in the people. Every adult, without any distinction whatsoever, is entitled to a share in running the Government, which is answerable to and removable by the elected representatives of the people. The preamble emphasizes that the Constitution is enacted by the people of India and given by them to themselves ; which means that the present Constitution, unlike the earlier Constitutions that India had, is neither an imposition nor a grant by some outside power. The Constitution sweeps away all undemocratic qualifications which under the Act of 1919 denied about 94% and under the 1935 Act, 72% of the adult population of India the right to vote. The provision of universal

adult franchise is truly a revolutionary one. It was the boldest decision taken by the framers of the Constitution. The total electorate created is in the neighbourhood of about 170 millions, which is the largest in the world. "India has pushed into the short space of less than three decades the process of the complete democratization of the franchise. The process, it may be remembered, took more than a century in England and in other advanced Western countries."¹ India is a Republic because apart from being democratic, she must have an elected Head of the State. The President of India can never be hereditary.

(ii) **Parliamentary Government :** The Central as well as the State Governments are, basically, parliamentary like the British Government. The head of the State is no doubt the President, but the real power resides in the Cabinet, which is responsible to and removable by a Parliament elected by the people. The provision for a President does not make the Constitution presidential because his position is more or less that of a constitutional head like the English King. The framers of our Constitution evidently preferred parliamentary government to a presidential form. It was quite prudent to do so. Such a Government is in keeping with our past traditions. The foundations of this form of government were firmly laid in India in 1892, if not earlier. Most of our present leaders are conversant with its principles, methods and technique and are sound parliamentarians. Moreover the system ensures day to day control over the Executive, (apart from periodic) which is not possible under the presidential form.

There are, however, some features of the Constitution, which are presidential in nature. Firstly the President has got the right to send messages to either House of Parliament, whether with respect to a bill then pending in Parliament or otherwise, and the House to which any message is so sent is under an obligation to consider it as early as convenient. Secondly, the President has got the right to return non-money bills for reconsideration to the Parliament. Thirdly, the President can require the Prime Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister, but which has not been considered by the Council. Such rights have never been used for the last two hundred years or so by the King in England, which is the home of parliamentary government. These rights have no meaning, unless they are meant to be used against the wishes of the Cabinet (which presumably at all times enjoys the confidence of the House of People) and have, therefore, been called presidential in nature. But these rights are not meant to be used under ordinary circumstances and, hence, do not prevent us from treating the Constitution, in essence, as parliamentary.

1. Srinavasan : Democratic Government in India, p. 151.

(iii) **Federation with a strong Centre :** Most of the conditions essential for the formation of a federation are present in India and, therefore, the framers of the Constitution wisely gave India a federal form of Government. There is a statutory division of powers between the Centre and the States, which cannot be normally changed by the Centre. The Supreme Court of India is there to declare any infringement or encroachment by either in the sphere of the other as illegal or *ultra vires*.

There are, however, some special features of the Federation, which have been introduced either to make the Central Government strong or to bring about a uniform administration throughout the country or to help in the growth of a common nationality. Some of these provisions are : a single citizenship throughout the country ; a single supreme integrated Judiciary ; uniform basic laws ; power of the Centre to make the Constitution unitary in emergencies ; some all-India Services under the control of the Centre holding key-posts in the States ; power of the President to appoint and dismiss the Governors of the States and absence of power with the States to frame their own constitutions. But these provisions do not render the Constitution non-federal or unitary.¹

(iv) **Secular character :** In the words of Mr. Venkataraman, the State is "neither religious nor irreligious nor anti-religious, but is wholly detached from religious dogmas and activities and thus neutral in religious matters." This is what we mean by the Secularism of the Indian State. The Constitution has incorporated many fundamental rights to ensure the Secular character of the State. A perfect religious freedom is guaranteed to all. All persons are entitled to freedom of conscience and the right to profess, practise and propagate a religion of their choice. Every religious denomination is entitled to manage its own religious affairs. Religious institutions are entitled to own, acquire and administer property for religious or charitable purposes. No one can be compelled to pay taxes for the promotion and the maintenance of any particular religious denomination. There cannot be any State religion. Religious instruction cannot be imparted in educational institutions run and maintained by the State. Religious instruction or religious worship cannot be made compulsory at educational institutions, which are either recognized by the State or receive aid from the State funds. The State cannot while giving grants, make distinctions between different educational institutions on the basis of religion. Communal electorates, which were a legacy of the British rule in India and would have proved a serious obstacle in the evolution of India into a truly Secular State, have been abolished altogether. To protect

1. How far the Constitution is truly federal and the bearing of these factors on this question are discussed in detail in Chapter XXXI.

the interests of the Scheduled Castes and Backward Classes, seats have, however, been reserved for a limited period of ten years.

These provisions were considered necessary to inspire confidence in the mind of the minorities residing in India. Secularism is the hall-mark of a progressive State. Such an attitude on the part of the State is particularly necessary in a society containing people professing more than one religion. Even England cannot claim such a character because Protestantism is recognized as the State religion. Pakistan is also not truly secular because a non-Muslim cannot be the Head of the State.

(v) Fundamental Rights : The inclusion of fundamental rights of citizens in a constitution is regarded as absolutely essential to achieve the ends of democracy. These are necessary for the development of the personality of a citizen and to make life worth living. The assured enjoyment of these rights is regarded as an acid test of a civilized society. Rights are life-veins of democracy, which cannot succeed in their absence. "A State is known by the rights it maintains" is a famous dictum of Prof. H. J. Laski. A comprehensive list of fundamental rights has been incorporated in the Constitution. To assure their adequate enjoyment, a duty has been placed on the Supreme Court—the highest Court of the land, to see that these rights are not infringed. A citizen can approach the highest Court of the land, through the proper channel, when he finds that his right has been violated.) Rights imply corresponding duties. Rights, therefore, can never be absolute, i.e., they are always subject to restrictions. Restrictions are necessary in the interest of the society as a whole and to ensure equal enjoyment of these rights for all citizens. Some restrictions have, therefore, been wisely placed on these rights. The main fundamental rights guaranteed by the Constitution are : right to equality ; right to freedom ; right against exploitation ; right to freedom of religion ; cultural and educational rights ; right to property and right to constitutional remedies.

(vi) Directive Principles : One of the novel features of the Constitution is that it contains a comprehensive list of the Directive Principles. These have been drawn on the lines of the Irish Constitution. The difference between the Fundamental Rights and the Directive Principles is that, whereas the former are justiciable, the latter are not so. A citizen cannot seek the protection of courts against the State, if it fails to implement the Directive Principles. The Centre, States and Local Governments have been directed by the Constitution to do their best for implementing these Principles. Although legal remedies to ensure their fulfilment are not available, yet their incorporation in the Constitution serves a useful purpose. Public opinion is the ultimate sanction behind them. All Governments, present as well as future, irrespective of their party affiliations, are bound by them. The voters have got the right to

judge the performance of a Government with the yard-stick of the Directive Principles—in terms of the extent to which they have been implemented by a particular Government. These Principles contain ideals which the framers of the Constitution have placed before the State in India. They are not useless, simply because they have got no legal sanction behind them. Some of these Directive Principles contain rights, which though very valuable, could not be guaranteed for the moment. Those rights have been given the form of the Directive Principles. Some of these Directive Principles are : adequate means of livelihood ; fair distribution of wealth ; equal pay for equal work ; employment for all ; free and compulsory education for children up to the age of 14 ; public assistance in the event of unemployment, old age, sickness, disability and other cases of undeserved want ; living wage for all workers ; organisation of the village panchayats, introduction of prohibition and the separation of judiciary from executive.

(vii) **Combination of Rigidity and Flexibility :** A flexible constitution is one that can be changed by the ordinary law-making process and the one which requires a special procedure for amendment is called rigid. Some amount of rigidity is necessary for a federation, because this form of constitution, being in the nature of an agreement between the Centre and the Units, should not be changeable without the mutual consent of the Centre and the States. A constitution is like a living organism. It must adapt itself to the requirements of the changing times and circumstances. It must permit a change, when the people definitely want the same. Hence a constitution should not be very rigid, nor should it be very flexible because that will make it too mutable and will introduce instability. (The Constitution of India is a fine blend of rigidity and flexibility. For the amendment of strictly federal provisions, $\frac{2}{3}$ majorities in both Houses of the Parliament and ratification by at least half of the States is required. This procedure is less rigid than the method of amendment in U.S.A., where ratification by $\frac{3}{4}$ of the States is essential. Then, there are some provisions which require, for amendment, only $\frac{2}{3}$ majorities in the Central Legislature and no ratification by the States is necessary. This method is simpler than the first. And lastly, there are some provisions which can be changed by the Union Parliament by simple majorities, which makes a part of the Constitution flexible. Our Constitution is flexible also in another sense. In time of an emergency, the President, by the use of his special powers can transform the federal nature of the Constitution into a unitary one, giving the Union Legislature a right to legislate on the entire State List. Even in normal times, the Union Legislature, in some cases, can acquire the right to legislate on the State List temporarily. In this context, Mr. Jawahar Lal Nehru observed "While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in a constitution. There should be a certain flexibility. If you make any constitution rigid and permanent, you stop the nation's growth, the growth

of the living, vital, organic people." The Constitution of India "can be compared to the supple twigs of a tree, which move away from their place temporarily to let a high carriage pass from under them, and then resume their place quietly."

Apart from these broad characteristics, there are some other aspects of the Constitution, which also need emphasis. The Constitution is a comprehensive document, containing 395 articles and 9 schedules. It is probably the lengthiest Constitution in the world. Not only have broad principles regarding the Legislature, Executive and Judiciary been enunciated, but even details of administration have been given a constitutional status. A detailed constitution is, often, considered undesirable, because it leaves very little room for the growth of conventions and, thus, binds the future generations to the wisdom of the present. But, at the same time, a comprehensive constitution has got its own advantages. It makes for precision and definiteness. A thoroughly democratic constitution was to be framed for India. As explained by Dr. Ambedkar, keeping in view the initial stages through which the Constitution was to pass and the undemocratic traditions and conditions of the Indian society, it was considered better not to leave many things to chance and to the vagaries of the majority in the Legislature. In some cases, transitory provisions were necessary. Special provisions were necessary for the protection and healthy development of Scheduled Tribes and Scheduled Castes and to safeguard the rights of all-India Services. Then there were the problems of the national language and the minorities. All these requirements added to the bulk of the Constitution.

Moreover, the Constitution has freely drawn on the experience of other countries. Parliamentary government, Rule of Law and Legislative Procedure follow the lines of the English Constitution. The Preamble and the Supreme Court are after the U.S.A. model. The Centre has been strengthened on the lines of the Canadian Constitution. The Union, State and Concurrent Lists have been drawn as in Australia. The Directive Principles are of the Irish pattern. It may also be added that the framers of the Constitution, though eager to borrow from other Constitutions, were not hesitant to reject what was considered harmful for India. A hereditary head of the State like that of England was considered out of question for India. The presidential form of U. S. A. was not adopted, nor the principle on which powers have been distributed between the Federal Government and the States in that country.

✓ **Comparison with the Act of 1935 :** There is a marked resemblance between the new Constitution and the Government of India Act, 1935. At places, even the language employed is the same. The following similarities between the two Constitutions are worth noting. Firstly, both embody the federal form of government. In both, the Centre is very strong as against the

Units. The three Lists of subjects, on which the division of powers between the Centre and the Units is based, are similar. Secondly, the parliamentary form of government is adopted by both. Thirdly, under the Act of 1935, the Governors of the Provinces were appointed by the Crown mostly on the advice of the Governor-General. They were not only the executive heads of the Provinces, but were also subject to the control of the Government of India. Moreover, they possessed many discretionary powers. Under the new Constitution, the Governors are appointed by the President and hold office during his pleasure. In a way, they are the agents of the Centre. They have also been endowed with discretionary powers. Fourthly, under the Act of 1935, a Second Chamber was provided at the Centre and in some of the Provinces. The new Constitution also provides a Second Chamber for the Union and also for some of the States, despite the severe criticism levelled against the Second Chambers in the Provinces when these were provided in the Act of 1935. Fifthly, both are lengthy documents and make provision for, not only the main constitutional organs of the Government, but also incorporate administrative details of the governmental machine. Sixthly, under the Act of 1935, the Governors were given the power to declare a constitutional break-down in a Province with the approval of the Governor-General. A similar right has been given to the President to declare, in case of an emergency, a constitutional break-down in a State, when responsible government may be brought to an end and the State may be governed under the instructions of the Centre.

One of the special features of the Act of 1935 was the innumerable safeguards provided under it. The present Constitution also incorporates many safeguards to ensure a smooth working of democracy in free India. The power of the Centre to assume administrative control of a State when its constitutional break-down is threatened, the controlling power of the Supreme Court over the High Courts, provisions regarding the Election Commission to ensure free and fair elections, the provisions which enable the Centre to control the States in many legislative, administrative and financial matters, the establishment of Public Service Commissions to avoid favouritism, etc., in appointments and to safeguard the rights of the public services, the detailed provisions regarding the administrative machinery to make for definiteness, the protection given to the religious, linguistic and cultural rights of the minorities are some of the examples. These safeguards were evidently introduced "to prevent errors and excesses of an untried democracy" on the Indian soil, which in the words of Dr. Ambedkar "is essentially undemocratic."

The new Constitution also differs from the Government of India Act, 1935, in many important respects. Firstly, the present Constitution gives India a republican form of Government, whereas the earlier government was a form of autocracy. Secondly, in the new

Constitution, all authority vests in the people of India. There is absolutely no scope for any outside interference. Under the earlier Act, power over India was held by the British Parliament and there were many provisions, which made outside interference in the administration inevitable. Thirdly, there was no definition of citizenship in the old Act. The present Constitution contains detailed provisions regarding the right of citizenship. Fourthly, the Act of 1935 made no mention of the fundamental rights of the citizens. The new Constitution not only incorporates a Chapter on Fundamental Rights, but also assures their proper enjoyment by making the Supreme Court of India the guardian of those rights. The Directive Principles are also a new feature. Fifthly, under the Act of 1935, the Federal Court was not the final authority even on constitutional matters. Appeals could be taken to the Privy Council in civil and criminal matters from the High Courts. The new Constitution debars all forms of appeals to the Privy Council and makes the Supreme Court of India the final authority in all judicial matters.

Sixthly, under the Act of 1935, only 14% of the people of the British India were given the right to vote. The new Constitution gives every adult citizen of India, man or woman, a share in choosing the Government. (Seventhly, the Act of 1935 was based on communal electorates and voters were divided on the basis of classes and communities. The new Constitution discards the vicious principle of communal electorates altogether and provides a common electorate for all the citizens of India. Lastly, under the Act of 1935, it was optional for the Indian States to join the Federation or not. Nor a democratic set-up was insisted upon as a condition precedent for those Indian States who were to join the Federation. Each State could have a separate administrative machinery. Under the new Constitution, not only the 500 and odd States have been reduced to a very small number, but a democratic set-up is also assured in all and the same Constitution applies to all the States.

Problems before the framers of the Constitution: When the members of the Constituent Assembly of India started the task of framing the Constitution in 1946, many problems were staring them in the face. On August 15, 1947, when the Constituent Assembly assumed sovereignty on behalf of India, many more problems presented themselves.

Firstly, they were to frame a constitution for a big country with a huge population, speaking many languages and professing different religions. Under such conditions, some measure of regional autonomy was necessary and something was to be done for welding all these diversities into a single nationality. Secondly a polity was to be devised which could ensure a harmonious blending of the Provinces, where democratic institutions were working, with

the Indian States with their autocratic rules. Although, the problem of accession of the Indian States to the Indian Union had already been solved by August 15, 1947, yet there was the urgent need of introducing democratic institutions in the States to make them march along with the former Provinces. Thirdly, there was the communal problem which had defied all solution so long as the Britishers were here, and had been made an excuse for the division of the country. Not only were the people divided on communal lines, but there was also a further problem of caste, sectional and inter-provincial jealousies, rivalries and prejudices. Something was to be done to break down these barriers. Fourthly, certain lessons from Indian History were simply obvious. India had lost to foreign invaders and conquerors, whenever her Central Government was weak. Territorial or inter-provincial jealousies and rivalries had disrupted and humiliated India more than once. Fifthly, the Britishers were leaving India as a going concern. A certain amount of continuity was inevitable with the political institutions which were already working in India, when the British Government left. Sixthly, the relations with Pakistan were strained. Kashmir had added fuel to the fire. Needs of eternal vigilance, internal law and order and external defence were clear.

And lastly, the achievement of Independence by India was a triumph of democracy. The whole case of our nationalism was built on the basis of the democratic principles and ideals. Utmost sanctity was, therefore, to be given to democratic principles and ideals in the Constitution. It is only in the light of *these conditions* that we can understand why the Constitution embodies the particular set of salient features as given above.

CHAPTER XXXI

UNION AND THE STATES

Territories of the Union : Before August 15, 1947, the territories of India consisted of the British Indian Provinces (which included Excluded and Partially Excluded Areas), Chief Commissioners' Provinces and the Indian States.¹ The Indian States alone, on account of their colossal number, presented a most baffling problem to those who wanted to see India divided in Units of a respectable size. The process of integration and merger which was completed much in advance of the date of the inauguration of the present Constitution saw the former Indian States reduced to about a dozen Units. With the introduction of the present Constitution, the territories of India were divided into four categories of States, called Part A, B, C and D States. Later, Andhra was added to the list of Part A States and some other minor changes followed. Before the introduction of the present territorial reorganisation, the States of India were divided as : Part A (Andhra, Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, Uttar Pradesh and West Bengal) ; Part B (Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union, Rajasthan, Saurashtra and Travancore-Cochin) ; Part C (Ajmer, Bhopal, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh); and Part D (The Andaman and Nicobar Islands).

In the statement of the objects and reasons, the States Reorganisation Bill, 1956 rightly explained, "The States of India, as they exist today, have been formed largely as a result of historical accidents and circumstances and there has, therefore, been a demand for the reorganisation of the component Units of the Indian Union on a more rational basis, after taking into account, not only the growing importance of the regional languages but also financial, economic and administrative considerations". The States Reorganisation Commission was accordingly constituted in December, 1953, to investigate the conditions of this problem, the historical background, the existing situation, and all relevant factors, and to recommend the principles which could be considered appropriate as well as the broad lines on which particular States should be reorganised. The Commission reported on September 30, 1955. The recommendations of the Commission were discussed and debated all over the country. As a result of those discussions, the Government of India

1. See p. 198.

arrived at some decisions. The States Reorganization Bill, 1956, which incorporates those decisions, was introduced in the Parliament in April, 1956. This was done after the views of the Legislatures of Part A, B, and C States (except Travancore-Cochin, whose Legislative Assembly had been dissolved by a proclamation of the President) had been received by the President under the proviso to article 3 of the Constitution. The Bill was referred to a Joint Committee of both Houses of the Parliament. The States Reorganization Bill accepted most of the recommendations of the S. R. Commission and it also made some important departures.

The main features of the scheme of Reorganization of States proposed in the Bill were : (a) the abolition of the then existing constitutional distinction between Part A, Part B and Part C States; (b) the establishment of only two categories for the component Units of the Union to be called the States and the Union Territories (Centrally-administered Areas) ; and (c) the abolition of the institution of the Rajpramukhs consequent on the disappearance of part B States. The present territorial re-organisation as introduced by the Constitution (Seventh Amendment) Act, 1956 is as follows :

- (i) *The States* : Andhra-Pradesh, Assam, Bihar, Bombay, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh, West Bengal, Jammu and Kashmir.
- (ii) *The Union Territories* : Delhi, Himachal Pradesh, Manipur, Tripura, the Andaman and Nicobar Islands, the Laccadive, Minicoy and Amindivi Islands.

Some of the changes introduced are daring and may have a far-reaching influence over the future progress of India. Patiala and East Punjab States Union has been merged with Punjab. Himachal Pradesh is officially told that sooner or later, it must also go to form a part of the Punjab. The fate of Bombay is hanging in the balance. The Maharashtrians claim it as a natural part of their State. The Gujaraties have their own objections to the transfer of Bombay to Maharashtra. Negotiations have again been started to divide Bombay into Gujarat and Maharashtra by the Congress High Command. The division of Bombay into two States appears to be inevitable.

If we succeed in regrouping the territories of India in about sixteen or so Units of a workable size, it will be a grand achievement indeed, keeping in view the map of India as it stood on August 14, 1947. This is what is being aimed at.

Future change in Units : Realizing that there might arise need for some immediate adjustments, the Constituent Assembly

wisely provided a very flexible method for making territorial changes in the areas of the States. Article 3 lays down, "Parliament may by law form a new State by separating a State or uniting two or more States or part of States, or by uniting any territory to a part of any State; increase the area of any State, diminish the area of any State, alter the boundaries of any State and alter the name of any State." But no such bill can be introduced in the Parliament, except on the recommendation of the President. When such a bill affects the boundaries of a State or States, the President must ascertain the wishes of the Legislature of the State or States concerned, before recommending such a bill to the Parliament. It may be noted that the President is not bound to accept the views of the State or States concerned. All that is required is that the views of the States concerned must be taken into consideration before proposing such changes. Such a bill can be passed by the Parliament by the ordinary majorities and may also contain consequential changes, including provisions as to representation in the Parliament and in the Legislature or Legislatures of the State or States affected by such a law. Such a law is not regarded as an amendment of the Constitution. The Constitution (Fifth Amendment) Act, 1955 authorizes the President to lay down the period within which the Legislature concerned might furnish its opinion, after which the President is free to introduce the Bill in the Parliament even if no such opinion is received. One month was fixed as the period for expressing opinions by the Legislatures on the relevant changes proposed in their territories by the States Reorganization Bill, 1956. When the Bill was under contemplation, it was feared that some State or States might obstruct legislation on reorganisation by simply withholding such an opinion. This is why the Fifth Amendment referred to above, was hurriedly got through by the Government, before enacting the States Reorganisation Act, 1956.

Thus it will be seen that the Parliament can make even drastic changes in the territories of the States by the ordinary process of law-making. As already stated, this provision was evidently introduced in order to provide a simple method for making some immediate future adjustment. But the provision puts a tremendous power in the hands of the Central Government. Such changes, in other federations, can be brought about by the usual amending process, which requires ratification by the States. The Parliament in India possesses even the right of abolishing a State altogether. Such a power can be too used by the Central Government as a threat against a State which is not prepared to the line of the Central Government. It is widely felt that "after the more immediately required changes have been made, this provision should be so amended, as to offer security of existence to Units for the future".¹

1. M. P. Sharma : Republic of India, p. 75.

The powers of the Union and the States are regulated mostly on the basis of the following Lists :—

The Union List : The most important items in the Union List are : defence of India : naval, military and air forces ; arms and ammunitions ; atomic energy ; industries declared by Parliament as necessary for defence or for prosecution of war ; central bureau of intelligence and investigation ; preventive detention ; foreign affairs ; U. N. O. ; war and peace ; citizenship, naturalisation and aliens ; admission into, emigration and expulsion from, pass-ports and visas ; delimitation of cantonment areas ; railways ; shipping and navigation on inland water-ways ; airways, aircraft and air navigation and provision of aerodromes ; posts and telegraphs ; public debt and the Union currency, coinage and legal tender, foreign exchange ; foreign loans ; Reserve Bank of India : post office savings bank ; imports and exports ; inter-state trade and commerce ; incorporation ; banking, bills of exchange, cheques, promissory notes etc. ; insurance ; stock exchange and future markets patents and copyrights ; establishment of weights and measures ; regulation and development of oilfields and mineral oil resources ; regulation of labour and safety in mines and oilfields ; opium ; industrial co-ordination ; determination of standards in institutions for higher education ; or research and scientific and technical education ; ancient and historical documents ; survey of India ; census ; Union Public Service Commission ; elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President and the Election Commission ; audit of the accounts of the Union and of the States ; Supreme Court and High Courts ; Union taxes, etc., etc.

The State List : Some of the more important items in the State list are as follows : public ; order ; police ; administration of justice ; prisons ; reformatories, and borstal institutions ; local government ; public health and sanitation, hospitals and dispensaries ; intoxicating liquors ; relief of the disabled and unemployable ; burial and burial grounds, cremations and cremation grounds ; education ; libraries : agriculture ; land ; forests ; protection of wild animals and birds ; fisheries ; gas and gas works ; trade and commerce within the State ; markets and fairs ; money lending and relief of agricultural indebtedness ; inns and innkeepers ; theatres and dramatic performances ; betting and gambling ; State public services and State Public Service Commissions ; public debt of the State ; treasure trove ; land revenue, State taxes and rates, etc., etc.

(3) **The Concurrent List :** The most important items in the Concurrent List are : criminal law ; criminal procedure ; preventive detention ; marriage and divorce ; contracts ; actionable wrongs ; bankruptcy and insolvency ; trust and trustees ; oaths ; civil procedure ; vagrancy, nomadic and migratory tribes ; lunacy

and mental deficiency ; prevention of cruelty to animals ; adulteration of food stuffs and other goods ; drugs and poisons ; economic and social planning ; trade unions ; industrial and labour disputes ; social security and social insurance ; employment and unemployment ; welfare of labour ; legal, medical and other professions ; relief and rehabilitation ; charities and charitable institutions ; price control ; factories ; boilers ; electricity ; newspapers ; books and printing presses, etc.

RELATIONS BETWEEN THE UNION AND THE STATES

The relations between the Union and the States can be studied under three heads, i. e., legislative, executive and financial.

Legislative Relations : The Parliament has got exclusive right to legislate on the Union List and the States to legislate on the State List. On the Concurrent List, the Union as well as the States can make laws, but in case of a conflict between such laws, the Union law will prevail. When a declaration of an emergency is in force, the Parliament can legislate on any subject enumerated in the State List. This power is momentous because the Legislature of the State concerned can be superseded altogether.

The Constitution provides three contingencies, when *even in normal times*, the Parliament may legislate on the State List for *special reasons* :—(a) If the Council of States declares by a resolution, supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that the Parliament should make law with regard to the subject. The Parliament can make laws for the whole or any part of the territory of India with respect to that subject, during the time the resolution remains in force. Such a resolution is valid for a year, but can be extended from time to time on a yearly basis. A law passed by the Parliament under this authority will become inoperative after six months of the expiration of the resolution of the Council of States. (b) When the Legislatures of two or more States have authorised the Parliament to make a law on the subject with regard to those States. Any other State may subsequently accept this law by a resolution of its own Legislature. This is a *voluntary* acceptance of the jurisdiction of the Parliament in State affairs by the States themselves and is, therefore, no encroachment by the Parliament in the affairs of the State. (c) The Parliament has also got the power to make any law for the whole of India or any part of the territory of India, when such a law is essential for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or such other body.

Administrative Relations : A duty has been placed on the Union to protect the State against external aggression and internal

disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. Besides, the Union Executive must look to the interests of India as a whole. It was, therefore, considered necessary to arm the Union Executive with some supervisory powers over the State Executives. The following provisions have been made for this purpose :—

(i) The executive authority of every State must be so exercised as to ensure compliance with the laws made by the Parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(ii) The executive power of every State must be so exercised as not to impede or prejudice the exercise of the executive power of the Union. The Executive of the Union is empowered to give directions to a State for that purpose.

(iii) The executive power of the Union can also extend to the giving of directions to a State as to the construction and maintenance of communications declared by the Government of India to be of national or military importance and also as to the measures to be taken for the protection of the railways within the State. But if, in compliance with these instructions, costs have been incurred by the State in excess of those which would have been incurred in the discharge of the normal duties of the State, the Government of India will pay to the State such sum as may be mutually agreed. If no such agreement is possible, the amount of compensation payable to the State, will be decided by an arbitrator appointed by the Chief Justice of India.

(iv) The President can, with the consent of the Government of a State, entrust to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends and a law made by the Parliament which applies in any State can confer powers and impose duties upon that State or its officers. But the Government of India must pay to the State, in lieu of those functions and duties, such sum as may be mutually agreed and in default of such an agreement, the amount as determined by an arbitrator appointed by the Chief Justice of India.

(v) Full faith and credit must be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State, according to the rules made by the Parliament.

(vi) A final judgment or order delivered or passed by civil courts in any parts of the territory of India is capable of execution anywhere within that territory according to law.

(vii) The Parliament can provide for the adjudication of any dispute with respect to the use, distribution or control of the waters of any inter-State river or river valley. The Parliament can remove these matters from the jurisdiction of the Supreme Court and other subordinate Courts.

(viii) If at any time it appears to the President that the public interests would be better served by the establishment of an Inter-State Council charged with the duty of: (a) inquiring into and advising upon disputes, which may have arisen between the States; or (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States have a common interest; or (c) making recommendations upon any such subject, and in particular, recommendations for the better co-ordination of policy and action with respect to that subject, the President can order the establishment of such a Council, and can define the nature of the duties to be performed by it and its organization and procedure.

Financial Relations :¹

FEDERALISM IN INDIA

Growth of the federal idea in India : Although the form of Government in India remained basically unitary up to 1937, it began to be realized by the end of the World War I that such a form of government was not at all suitable for India. A unitary form of government has its own advantages for a foreign ruler, but it could not suit the conditions prevailing in India. The seeds of federalism were sown in India in the policy of decentralization which was initiated by Lord Mayo as far back as 1870. The Montford Report struck the first official note in favour of the federal idea. Its authors said, "Our conception of the eventual future of India is a sisterhood of States, self-governing in all matters of purely local or provincial interest". The introduction and working of Dyarchy helped in the growth of the federal idea. Sir Frederic Whyte and Sir Malcolm Hailey envisaged the future of India only on federal lines. The Simon Commission was strongly in its favour and wrote, "Apart altogether from any question of an ultimate Federal Union between the Indian States and British India, there are, we think, very strong reasons for the reconstruction of the Indian Constitution on a federal basis. It is only in a federal structure that sufficient elasticity can be obtained for the union of elements of diverse internal conditions and of communities at very different stages of development and culture".

At its early stages, the nationalist leaders of India looked upon the talk about federation, coming as it did from official sources,

1. See Chapter on Financial Devolution.

with suspicion. Their attitude is summed up in the Nehru Report, which recorded, "It would be a most one-sided arrangement, if the Indian States desire to join the federation, so as to influence by their votes and otherwise the policy and legislation of the Indian Legislature without submitting themselves to the common legislation passed by it. It would be a travesty of the federal idea." It was generally believed that the States were being brought under a common political structure to retard the pace of nationalism and to counteract the strength of the progressive parties in the Central Legislature. In 1930, a federation for India, including the Indian States, was accepted practically by all the delegates to the First Round Table Conference. It is widely believed that the Princes agreed to join the federation at that time because of the pressure of the British Government on them. The federal form took a practical shape in the Government of India Act, 1935. The Federal part of the Act was, however, rejected by all the progressive Parties in India, not because a federal form was not suitable for India, but because the type of the federation proposed for India by the Act was considered to be so devised as to retard the future growth of India on her march to self-government. When the Constituent Assembly met in 1946, practically all were agreed that a federal form was much more suitable for India. The last hitch in its way was solved by the timely accession and integration of the former Indian States in the Union and the falling of Junagarh and Hyderabad in line with other States.

All usual federal features present: Although India is called a "Union of States", her Constitution possesses all the usual characteristics of a Federation. Firstly, it is a written as well as a rigid Constitution. Leaving apart minor provisions, the Constitution cannot be changed by the ordinary law-making process. The amendment of all strictly federal provisions require ratification by the States. Secondly, there is a statutory division of powers between the Union and the States. Three comprehensive Lists have been drawn for that purpose—the Union List, the State List and the Concurrent List. Ordinarily, the Union as well as the States are to restrict themselves within the sphere allotted to them. These Lists cannot be altered without the common consent of the Union and the States. Thirdly, the Constitution is the supreme law of the land. The Executive, the Legislature and the Judiciary, all draw their powers from it. Any law which goes against the provisions of the Constitution is unconstitutional, i. e. *ultra vires*. And fourthly, there is a Supreme Court of India whose function is to keep intact the division of powers between the Union and the States. If either the Union or the State interfere in the sphere of the other, the Supreme Court can declare such infringement illegal. This power of the Supreme Court is meant to restrict the Union as well as the States to their allotted spheres.

Special features of the Indian Federation : Apart from the usual features referred to above, the Federation has got some peculiar or special features, which are usually not found in other federations. Two of these special features, are as follows :—

I. A Federation with a strong Centre : The Indian Union possesses, probably, the strongest Centre *vis a-vis* the Units. The Constitution contains some unusual provisions which were incorporated to make the Central Government strong. Firstly, during the time of an emergency, the Constitution can be changed into a unitary one and the Centre gets power to legislate on the entire State List. The principle which is adopted in other federations, namely, "once a federation always a federation", is thus not followed in the case of our Constitution. The Constitution gets transformed into a unitary type in emergencies. Secondly, the Union Parliament can make laws on the State List even in normal times for special reasons. This can be done when the Council of States passes a resolution for that purpose by two-third majority or when two or more States themselves want it or when such a legislation is considered necessary to implement some international undertaking or obligation. Thirdly, the Union List is very comprehensive. It contains as many as 97 items. Besides 47 items are placed in the Concurrent List. When the Union as well as a State has passed a law on a certain item in the Concurrent List, the law of the Union prevails against that of the State. Moreover, the residuary powers are also given to the Centre. This is done on the lines of the Canadian Constitution, again to make the Centre strong.

Fourthly, the Union Government has been given the power to control the State Executives. The Governors are appointed by and are responsible to the President. The State Executives are duty-bound to ensure the execution of the Union laws and to follow the instructions of the Central Executive. The officers working in the States can be entrusted with special duties by the Union Executive, when that becomes necessary. Fifthly, the Union has been given great control over the finances of the States. This power of the Union becomes decisive, when a financial emergency is declared. Sixthly, all initiative for amending the Constitution belongs to the Union. The State Legislatures cannot initiate a move for amending the Constitution. And lastly, the power of the Parliament to change the boundaries of States is immense. The Parliament can even destroy the existence of a State, if and when it considers the same necessary.

II. A Federation aiming at uniformity and unity : The Constitution has introduced another set of provisions, which not only make the Centre strong, but also aim at bringing about a uniformity in the whole length and breadth of the country in matters of administration. It is said that the aim of a federation

is, 'union and not unity'. But the Indian Constitution clearly endeavours to bring about unity amongst the people of various States, and with that end in view, has introduced many political institutions to develop a uniform pattern throughout the land. These are as follows :—

Firstly, there is a single, central and integrated judiciary throughout the country with the Supreme Court at the apex. The High Courts of the States are bound to obey the orders and judgments of the Supreme Court. This is not so in the U. S. A., where the Supreme Court has got no power over the ordinary courts of the States. Secondly, in India there is only one type of citizenship. All are the citizens of India. No State can discriminate against the residents of other States in the Union. In other words, no State citizenship is recognised. In the U.S.A., on the other hand there is a dual citizenship. A resident, for example of New York, is a citizen of the U. S. A. as well as of the State of New York. In New York, he gets preferential treatment, which is not accorded to the residents of other States. Thirdly, there are some all-India Services, which are under the complete control of the Union Government. The members of these services are appointed to almost all the key administrative posts in the States. For the present, the two important all-India Services are : the Indian Administrative Service and the Indian Police Service. The Union Government can influence administration of a State through the members of these services.

Fourthly, while admitting the rights of the regional languages to flourish and be used in their own regions, the Constitution has made one language, i. e., Hindi in *Dev Nagri* script as the *lingua franca* or the official language of India. Our Constitution makers were evidently of the opinion that by adopting one language they would help in the growth of a single nationality throughout India. Fifthly, the States cannot have separate Constitutions of their own. The same Constitution is applicable to and binds all the Units of India. This is not in the U.S.A., where the States can have their separate Constitutions. And sixthly, our Constitution has insisted that there would be a uniformity of basic laws throughout the country. The civil, criminal, procedural and property laws will be, as far as possible, the same throughout India. This object is sought to be achieved by placing these subjects in Concurrent List, so that the Union should be able to frame laws on these topics which require uniformity in all the States.

It may be repeated that these provisions serve a double purpose. They strengthen the Centre and introduce a uniform pattern of administration throughout the country to bring about unity in the people. Territorial, sectional and caste divisions have been the common curse in India. The Constitution aims at generating such forces as will blunt the edge of diversities and divisions to

make possible the growth of a healthy nationalism. It attempts thereby to unite the people of India in a common allegiance to the Motherland.

How far India is a true Federation : There are two fundamental tests of a federation. Firstly, it should consist of States or Units, with their own regional executives, legislatures and judiciaries. Secondly, there should be a division of functions between the Centre and the States, which should not be, unilaterally, alterable by the Centre.

Both these tests are fulfilled by the Constitution. India will always be a 'Union of States'. Here and there, the boundaries and names of some of the States may be changed and some States may even be merged in other States, thus destroying the very existence of some of them ; but there cannot be a time when the entity or the separate existence of all the States could be destroyed. Thus the separate existence of, at least, some Units with their separate governmental organs is a permanent feature of the Constitution. So the first test is adequately fulfilled. The second test is also met. There is an elaborate division of functions between the Union and the States. The Lists cannot be amended, except with the consent of the States. Normally and ordinarily, the Lists are binding. The Supreme Court is there to declare infringements *ultra vires*. The giving of power to the Centre to legislate on the State List in emergencies and on the three special occasions provided in the Constitution in Articles 249, 252 and 253, e.g., when the Council of States has passed a resolution for that purpose, or on the request of the States, or to implement international undertakings are not normal provisions and do not make the Constitution non-federal or unitary. It is sometimes argued on the basis of special provisions described above (aiming at a strong Centre and uniformity) that these provisions render the Constitution almost unitary. But this is not so. A strong Centre or provisions aiming at uniformity in the administration do not render a Constitution unitary or non-federal. Unequal representation of the States in the Council of States also does not make the Constitution non-federal.

It is difficult to agree with the remark that "India is a unitary State with subsidiary federal features, rather than a federal State with subsidiary unitary features". It is more appropriate to describe India as a federation with subsidiary unitary features. We may call it a *quasi-federal* Constitution. It is not exact to say that "India's Constitution is federal in form, with a pronounced unitary bias". The Constitution is *federal, not only in form* but it is also basically federal, though it is true that it has got a pronounced unitary bias. In fact, the Constitution has given India a federal form of Government with some special features, i.e., strong Centre and some provisions aiming at uniformity as well as unity.

CHAPTER XXXII

FUNDAMENTAL RIGHTS

“A State is known by the rights it maintains” is a famous dictum of Prof. H. J. Laski. There is a consensus of opinion among the Political Scientists of the present day that the enjoyment of certain basic rights is absolutely essential for the development of the personality of an individual and to make his life worth living. The ideal before democracy is to utilise the considered opinion of every citizen of a country in forming and running its government. Such an ideal cannot be achieved, unless the rights like those of free speech and free press are guaranteed. Rights are, therefore, necessary to make democracy a success. These rights are *fundamental* or natural in the sense that they are universally regarded as essential for good life. Once the rights are enshrined in a constitution and a duty is cast on the courts to see that they are not violated, their continuous enjoyment by the citizens is assured.

America is the first country to include a list of fundamental rights in her Constitution. The practice became common after the World War I. The Weimar Constitution adopted by Germany in 1919, the Irish Consitutions of 1922 and of 1936, the Russian Constitution of 1936, the French Constitution of the Fourth Republic and the recent Japanese Constitution—all contain a list of fundamental rights.

When the Government of India Act, 1935 was on the anvil, a demand was made by some Indian leaders that a list of fundamental rights should be included in the contemplated Act. The Simon Commission and the Joint Select Committee of Parliament on the Constitutional Reforms were evidently against the inclusion of such rights in the Constitution. No doubt such rights do not form a part of the written Constitution of England, but on the basis of past traditions and common law decisions, these rights are fully enjoyed by Englishmen as a matter of practice. The nationalist opinion in India has always considered it advisable that such rights should be included in the Constitution because they had a bitter taste as to how such rights of Indians were trampled under foot during the time of the British rule.

✓ **The rights actually guaranteed :** The Constitution grants seven categories of fundamental rights : (1) Right to equality ; (2) Right to freedom ; (3) Right against exploitation ; (4) Right to freedom of religion ; (5) Cultural and educational rights ; (6) Right to property ; and (7) Right to constitutional remedies. Each of

these categories of rights is made up of a set of kindred rights, which are shown under the main right as follows :—

1. Right to Equality : (i) Everybody is equal before the law. (ii) All are entitled to the equal protection of laws. (iii) No citizen shall be subject to any disability on grounds of religion, race, caste, sex, or place of birth with regard to access to shops, public restaurants, places of public entertainment or in the use of wells, tanks, roads, etc. The State can, however, make a special provision or concession for women and children. (iv) All have equal rights in matters relating to employment or appointment to any office under the State. Three exceptions can, however, be made to this right : (a) the Parliament may fix residential qualifications with regard to certain appointments under a State ; (b) posts can be reserved for any backward class of citizens, which in the opinion of the State are not adequately represented in the public services ; and (c) it may be provided that the holder of an office under a religious or denominational institution should be a person belonging to that religion or denomination.

(v) Untouchability is abolished. Its practice in any shape or form is forbidden and is made an offence punishable in accordance with law. The Parliament has recently passed a law fixing stringent penalties for those who may be found guilty of practising untouchability. This right makes an attempt to uplift fifty million individuals from their age-old low social status. It makes illegal the most degrading social inequality practised by the Hindu society. The provision aims at the fulfilment of the life's dream of Mahatma Gandhi. But it is a pity that the evil practice still persists. Efforts to create strong public opinion against the evil, drastic action on the part of the Government against those who disobey the law and economic uplift of the Harijans are essential to achieve appreciable practical results. (vi) Titles, except military and academic distinctions, are not to be conferred by the State. The citizens of India are forbidden to accept titles from foreign States. Even foreigners in the service of India cannot accept titles from foreign States without the previous permission of the President. (vii) The right to vote has been guaranteed to every adult citizen. This right is not mentioned in the chapter on fundamental rights, but the right is as important or fundamental as any other right included in that chapter.

The object of the above-mentioned rights is to ensure equality. Equality to be perfect must include economic equality, which means equal economic opportunities. Political and social equality are not of much use in the absence of economic equality. The rights detailed above do not include rights which bring about economic equality, e.g., the right to work, the right to adequate minimum wage, etc. All cannot be equal before the law or cannot get equal protection of the law, except technically, so long as the poor cannot afford to meet

the high costs of the law courts. A poor man's son in India is decidedly at a disadvantage in the matter of getting higher education. The workers do not get a square deal everywhere at the hands of the employers. The Government has made socialist society as its objective. Efforts are being made to lift the lot of the common man. Much is being done, but much more is yet to be done. Till minimum adequate wage is assured to all those who are willing to do socially necessary work, all other equalities (no doubt useful in their own way) do not take the country very far.

II. Right to Freedom : (i) All citizens have the right to freedom of speech and expression. This right includes the right of free press and publication. According to the Constitution (First Amendment) Act, 1951, the Parliament can impose on this right *reasonable restrictions* in the interest of the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. According to clause (2) of Article 19, as originally worded, the State could restrict the right of free speech and expression of a person only when his action undermined its security or tended to overthrow the State. Restrictions could not be laid even to prevent an incitement to an offence. The Supreme Court interpreted this part of the clause in two famous cases, i. e., *Romesh Thaper versus The State of Madras* and *Brij Bhushan versus The State of Delhi* and came to the conclusion that this clause does not punish acts, which merely disturbed or tended to disturb public peace and order. Nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights of freedom of speech and expression. It was also pointed out in judgments that the clause is so widely worded that even an incitement to murder is not covered. The Constitution (First Amendment) Act, 1951, substitutes the above-mentioned clause in place of the old clause (2) of Article 19. A storm of controversy was raised in the Parliament, when this new clause was substituted. It was vehemently argued by the Opposition that the new clause enables the State to impose undue restrictions on the liberty of free speech, expression and press. The Government and its spokesmen, on the other hand, were equally certain that reasonable restrictions are always justifiable for purposes specified in the clause. It is for the Supreme Court to decide finally whether a particular restriction is reasonable or not, which is an adequate guarantee that such restrictions, if and when imposed, will not be arbitrary.

(ii) All citizens have the right to assemble peacefully, without arms and to form associations or unions. The State can, however, impose restrictions on this right in the interests of public order.

(iii) All citizens have the right to move freely throughout the territory of India, reside and settle in any part of her and to acquire, hold and dispose of property. The State can, however, impose

reasonable restrictions on these rights, either in the interests of the general public or for the protection of any Scheduled Tribe.

(iv) All citizens have the right to practise any profession and to carry on any occupation, trade or business. Reasonable restrictions can be imposed in the interests of the general public. The State can fix the professional or technical qualifications necessary for practising any profession. The State can also make a law relating to the carrying on by the State or by a corporation owned or controlled by the State of any trade, business, industry or service, whether to the exclusion of citizens or otherwise. This gives the State a right to carry on unimpeded, its programme of socialisation of trades and industries.

(v) No person can be convicted of an offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor can be subjected to a penalty greater than that which might have been imposed under the law in force at the time of the commission of the offence. No person can be prosecuted and punished for the same offence more than once. No person accused of an offence can be compelled to be a witness against himself.

(vi) No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. In U.S.A. the clause "due process of law" has been used in a similar context. The Supreme Court has held in a famous case (*Gopalan versus The State of Madras*) that the words, "procedure established by law" do not mean, "due process of law" as understood in U.S.A. In America the Supreme Court has declared many laws imposing restrictions on life and personal liberty unconstitutional on the ground that they are unreasonable or oppressive. Chief Justice Kania, in the above case, remarked, "By adopting the phrase 'procedure established by law,' the Constitution has given the Legislature the final word to determine the law regarding personal liberty and life. However drastic or oppressive a law relating to arrest, imprisonment or detention may be, the Courts cannot declare it illegal. As far as this Article is concerned, the word of the Legislature is supreme and there is no right of judicial review." It may, however, be added that this Article does not apply to the Right to property, which is regulated by Article 31.

The following rights are given as safeguards against arbitrary arrest and detention. No person who is arrested shall be detained in custody without being informed, *as soon as may be*, of the grounds for such arrest, nor shall be denied the right to consult or be defended by a legal practitioner of his choice. Moreover, every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four days and no person shall be detained in custody beyond this period without the authority of a magistrate. It may, however, be noted.

that the above-mentioned safeguards are not available to enemy aliens and to those citizens who are arrested and detained under any law providing for a preventive detention.

Preventive detention means detention of a person without a regular trial by law courts. Such a detention is considered necessary in some cases "in the interest of the security of the State, when it is not easy to establish a regular legal charge against a person suspected of anti-social and anti-national activities and to secure his conviction by a legal proof in a judicial court." No person can, however, be detained *without trial* for more than three months except: (a) on the recommendation of an Advisory Board consisting of persons who are qualified to be appointed as Judges of a High Court; or (b) when such person is detained in accordance with the provision of any law made by the Parliament permitting longer detention. The Parliament has the right to prescribe the procedure to be followed by the Advisory Board in such cases and the maximum period beyond which a person may not be detained, for any reason whatsoever, in certain classes of cases.

III. ✓ **Right against exploitation:** (i) Traffic or trading in human beings, *begar* i. e., forced work without payment and other similar forms of involuntary labour are prohibited. Any contravention of this provision shall be an offence punishable in accordance with law. But the State can impose compulsory service for public purposes, e. g., a compulsory military training or service, obligation to serve as a juror, etc., without, of course, discriminating on the basis of religion, race, caste, etc. (ii) No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

IV. ✓ **Right to freedom of religion:** (i) All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate any religion, subject to considerations of public order, morality and health. The wearing and carrying of *kirpan* is included in the profession of the Sikh religion. The State can, however, regulate or restrict any economic, political or other secular activity which may be associated with a religious practice. It can also make laws for social welfare and reform and for the throwing open of the Hindu religious institutions of a public character to all classes and sections of the Hindus, including those of Sikh, Jain and Buddhist religions. (ii) Every religious denomination shall have the right to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, and to acquire, own and administer property. (iii) No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated for payment of expenses for the promotion or maintenance of any particular religion or religious denomination. (iv) No religious instruction shall be provided in

any educational institution, wholly maintained out of State funds. But this restriction shall not apply to an educational institution administered by the State, but established under an endowment or trust, which requires that religious instruction shall be imparted in such an institution. In educational institutions recognized by the State or receiving aid out of State funds, attendance at religious instruction is optional. Freedom in religious matters is, thus, assured. *India's claim of being a secular State is based on these rights.* The State is bound to remain neutral in religious matters. Secularism is a hall-mark of a progressive State and was specially necessary in India to inspire confidence in the mind of the religious minorities. Free development of their language, religion and culture is assured to all of them.

V. Cultural and educational rights : (i) Any section of citizens, having a distinct language, script or culture of its own, shall have the right to conserve the same. (ii) No person shall be denied admission into any educational institution, maintained by the State or receiving aid out of State funds, on grounds of religion, race, caste, etc. A proviso has been added to clause (2) of Article 29 by the Constitution (First Amendment) Act, 1951 that the State can make special provision in this matter for the advancement of socially and educationally backward classes of citizens, and for the Scheduled Castes and the Scheduled Tribes. This amendment was necessitated by a decision of the Supreme Court which declared unconstitutional an Order of Madras Government, which had reserved some seats for some backward classes in the State in some educational institutions. (iii) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (iv) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language.

"The object of these rights," in the words of Dr. Ambedkar, "was to see that if there was a cultural minority which wanted to preserve its own language and culture, the State would not, by law, impose upon it any other culture which might be local or otherwise." The ideal before the State is that of a composite culture—a happy blend of various cultures existing at the present time in the country.

VI. Right to Property : No person shall be deprived of his property save by the authority of law.

Clause (2) of Article 31 provides that no property shall be compulsorily acquired by law save for a *public purpose*, unless the law provides for compensation and either fixes the amount of compensation or specifies the principles on and the manner in which the compensation is to be determined and given. It was

added by the Constitution (Fourth Amendment) Act, 1955 that "*no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.*" Clause (2A) provides that where a law does not provide for the transfer of the ownership or right to possession of a property to the State or a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

No such law, as is referred to in clause (2), made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent. If any law pending at the commencement of the Constitution in the Legislature of a State has, after it has been passed by such Legislature been reserved for the consideration of the President and has received his assent, then notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any Court on the ground that it contravenes the provisions of clause (2).

Nothing in clause (2) shall affect the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty, or for the promotion of public health or the prevention of danger to life or property or in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country or otherwise, with respect to property declared to be an evacuee property. Any such law enacted by a State not more than eighteen months before the commencement of the Constitution and submitted to the President within three months from the said commencement and certified by the President by public notification is not to be called in question in any court of law.

No law providing for the acquisition by the State of any estate or taking over the management of any property by the State for a limited period or the amalgamation of two or more corporations or the extinguishment or modification of any rights of managing agents, secretaries and treasurers' managing directors, directors and managers of corporations or and voting right of share-holders there of or the extinguishment or modification of any right with regard to any mineral or mineral oil shall be void on the ground that it abridges the right to property. If such a law is made by the Legislature of a State, it should have been assented to by the President. The courts have been specifically forbidden to question the legality of no less than twenty laws abolishing *zamindari* etc., passed by the various States all over the country enumerated in Schedule Ninth of the Constitution.

Thus, private property in India can be compulsorily acquired but only for a public purpose, i.e., for the general interests of the

community. It is not necessary that the acquisition should benefit the entire community. It is for the Courts to decide finally whether the purpose for which a property has been acquired is public purpose or not. If it is found that there is no public purpose, the law can be declared *ultra vires*, i. e. unconstitutional. Another condition essential is that, either the amount of compensation should be fixed, or the principle on which the compensation is to be granted should be specified. When this provision was included in the Constitution, the framers of the Constitution made it clear, through their speeches in the Constitution Assembly, that their intention was to debar the jurisdiction of the Courts to pronounce upon the adequacy or otherwise of the amount of compensation. All the same, the Supreme Court, on the basis of certain canons of interpretation, invalidated some State Laws regarding abolition of *zamindari*, etc., and declared that the amount of compensation granted must be just. Such judgments have necessitated the amendment of the Article twice, viz., the First and the Fifth Amendment. As the law stands at present, the Judges have been told clearly that it is entirely and exclusively the power of the Legislature to decide the amount of compensation. The power of the State to acquire private property for a public purpose in India is drastic indeed. This was considered essential to achieve the objective of a socialist society which cannot be achieved, unless the policy-makers possess the right to bring about an equitable distribution of wealth, without a demand for adequate compensation by those in whose hands the property had got concentrated. In capitalistic countries like U. S. A., private property cannot be acquired by the State without giving reasonable or adequate compensation. It is for the courts in those countries to decide whether the compensation is adequate or not.

VII. Right to Constitutional Remedies : Rights are useless, unless their infringement is prevented and enjoyment is secured. The Constitution, therefore, not only provides fundamental rights, it also prescribes remedies against those who violate these rights. The Constitution guarantees to every citizen the right to move the Supreme Court, through proper channels, for the enforcement of these rights. The famous rights of judicial review is given to the Supreme Court for the protection of these rights. All laws existing previous to the commencement of the Constitution, which are contradictory to these rights, have been declared unconstitutional. The Government of the Union, States and Local bodies are forbidden to make any law which is contrary to these rights. The Supreme Court has been endowed with the famous power to issue writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* for the enforcement of any of these rights. Such writs can also be issued by the High Courts for protecting these rights. Dr. Ambedkar has rightly described these constitutional remedies as "the heart and soul of the Constitution."

The nature of Writs : A writ means a legal instrument to

enforce obedience to the orders of a court. These writs are a product of English legal History. They have proved a bulwark of personal liberty and are, therefore, regarded as one of the most precious possessions. Before the commencement of the Constitution only the High Courts of Calcutta, Bombay and Madras were empowered to issue some of these writs. Under the Constitution, the Supreme Court as well as the High Courts have the right to issue these writs. By a judicious use of this power by the courts, any abuse of authority can be prevented.

(a) *Habeas corpus* means "you may have the body." It is regarded as the most valuable right for the protection of personal liberty. It provides a remedy for a person, who is wrongfully detained or restrained. The court can compel a person, who has detained another, to produce before the court the person detained, so that the court should be in a position to decide whether the detention is lawful or not. If the court comes to the conclusion, after hearing both sides that, it was a case of unlawful detention, the man detained can immediately be set free. (b) *Mandamus* means "we command". This writ is issued when the court wants to compel a person or a body to perform his or its duty. It is used mostly to enforce the performance of public duties. (c) *Prohibition* means "to prohibit or forbid". This writ is usually issued by a superior court to an inferior court preventing the lower court from exercising jurisdiction which is not legally vested in it. It can compel a body entrusted with judicial duties to restrain from exercising jurisdiction which is not vested in that body. When such a writ is issued the trial in the lower court immediately comes to an end.

(d) *Certiorari* means "to be more fully informed of." This writ "may issue out of a superior court requiring that the record of the proceedings in some cause or matter pending before an inferior court should be transmitted into the superior court to be there dealt with." The difference between the writ of 'prohibition' and the writ of 'certiorari' is that, whereas the former is preventive in nature, the latter is remedial. In the case of 'prohibition', the objective is to prevent wrongful jurisdiction or power from being exercised. The purpose of 'certiorari' is to remedy the use of excessive or wrongful jurisdiction. In the case of 'certiorari' the superior court generally orders the removal of the suit to some higher court for meeting the ends of justice. (e) *Quo warrant* means "by what order". When a person claims or usurps any office, franchise or liberty, the court may enquire the authority under which the claim is being made, in order to decide whether the claim is rightfully made or not. If a person acts in an office in which he is not entitled to do, the court may stop that person through this writ, from so acting.

The suspension of some fundamental rights : The only time when rights enumerated in article 19 can be suspended is

when a state of emergency has already been declared by the President. The President is also empowered to suspend constitutional remedies during a period of emergency. This right of the President to suspend some fundamental rights is often criticised. In this connection, it may be noted that a declaration of an emergency does not, in itself, suspend rights in article 19 or the constitutional remedies provided under the Constitution for the enforcement of the rights. A specific or further order by the President for the suspension of these rights is necessary. When the rights are so suspended, this may not be done with regard to the whole of India. Moreover during the period of an emergency, the powers of the President are subject to the power of the Parliament, which is a popularly elected body. Besides, rights are restored when the emergency is over. Hence, there is hardly any justification for resenting the possible suspension of some fundamental rights during an emergency. In abnormal times, when the existence of the State itself is in danger, it must be endowed with the power to take all necessary steps to preserve itself and to tide over the extraordinary difficulties. In the safety and security of the State lies the good of the individuals composing it.

Limitations on rights : It is sometimes argued that so many restrictions and limitations have been placed by the Constitution on these rights, that their inclusion in the Constitution has been rendered almost useless. This is rather an erroneous idea. No rights can ever be absolute. They are always subject to limitations which are imposed for the good of the community as a whole. Rights are inseparably bound up with duties. Even in U. S. A., the Supreme Court has hedged such rights with various types of limitations, although the Constitution of U. S. A. was silent about these limitations.

The Rule of Law in India : The Constitution has recognised the Rule of Law as a welcome legacy of the British Rule in this country. The Rule of Law as commonly understood means, primarily, two things. Firstly, that all are equal in the eyes of law and, secondly, that no body can be deprived of his life, liberty and property except according to law. Articles 14, 19 (f), 21, and 31 attempt to ordain the Rule of Law in India. It is provided that "the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India (Art. 14). All citizens shall have the right to acquire, hold, and dispose of property [Art. 19 (f)]. No person shall be deprived of his life or personal liberty except according to procedure established by law (Art. 21). No person shall be deprived of his property save by authority of law (Art. 31)."

There is, however, some difference between the Rule of Law as it prevails in U. S. A. and its applicability in India. In India, a person can be deprived of his life and personal liberty "according to procedure established by law". In U. S. A.,

no body can be deprived of his life, liberty and property except according to 'the due process of law.' As already explained, the difference between the two clauses is that, whereas in U.S.A. it is for the courts to decide whether a restriction imposed on life and liberty is reasonable or not ; in India, the will of the Legislature is supreme regarding the nature of restrictions imposed by the State on these rights. Moreover, whereas in America a person cannot be deprived of his property without granting him compensation which is regarded as reasonable or adequate by the courts ; in India, a person can be deprived of his private property by the will of the Legislature and the courts do not possess the right of questioning the adequacy or otherwise of the amount of compensation granted. This shows that whereas in U.S.A., broadly speaking, the final word lies with the courts as to how far these rights can be restricted, in India the will of the Legislature is mostly kept supreme. In this country, the law provides for the grant of compensation, but the amount of compensation granted is left to be decided by the Legislature. This position is quite different from the right of private property in a capitalistic country. In India, socialist society is the goal. Such an ideal cannot be achieved, if the holders of property can insist on an adequate compensation. Concentration of wealth in few hands cannot be avoided, unless the State is given the right to order or regulate the distribution of property in a manner that the 'haves' could be deprived of some part of their property to be passed on to the 'have-nots'. The State in India is fully armed with the power to bring about an equitable redistribution of property.

DIRECTIVE PRINCIPLES OF STATE POLICY

Apart from the Fundamental Rights discussed in the foregoing pages, the Constitution also lays down some Directive Principles of State Policy. The provisions regarding the directives are not enforceable by the courts. But it has been clearly laid down that these principles are, nevertheless, fundamental in the governance of the country. The Constitution further places a duty on the State to apply these Directives in making laws. The State in this part of the Constitution means the Government and Parliament of India, the Government and the Legislature of each of the States and all Local authorities.

Difference between Fundamental Rights and Directive Principles : The main difference between a Fundamental Right and a Directive Principle is that, whereas the former is enforceable by the courts, the latter is not so. The courts cannot compel the State to implement any of these Directives. The sanction behind the Fundamental Rights is legal, i.e., the coercive power of the State, whereas the sanction behind the Directive Principles is political and moral. Besides, whereas the Fundamental Rights have been defined in clear and precise terms, the Directive

Principles are enunciated in the form of general aims and objectives of the State policy.

The Directive Principles may be grouped under three headings, i.e. socialist, Gandhian and liberal as shown below :—

Socialist Principles : (i) The State shall direct its policy towards securing the citizens, men and women equally, the right to an adequate means of livelihood. (ii) The ownership and control of the material resources of the community shall be so distributed as best to subserve the common good. (iii) The economic system shall not result in the concentration of wealth and means of production to the common detriment. (iv) There shall be equal pay for equal work for both men and women. (v) The health and strength of workers, men and women, and the tender age of children must not be abused. The citizens shall not be forced by economic necessity to enter vocations unsuited to their age and strength. (vi) The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. (vii) The State shall make provisions for securing just and humane conditions of work and for maternity relief. (viii) The State shall endeavour to secure to all workers, work, a living wage, and such conditions of work as to ensure a decent standard of life, full enjoyment of leisure, and social and cultural opportunities.

Most of what is here enjoined for the State to do, is actually included in the list of Fundamental Rights in U. S. S. R. The principles enumerated above represent the general aims of a socialist State. The provisions wed every future Government in India to some sort of socialism.

Gandhian Principles : (i) The State must take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. (ii) The State should endeavour to promote cottage industries on an individual or co-operative basis in rural areas. (iii) The State must take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milk and draught cattle. (iv) The State should promote, with special care, the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and Scheduled Tribes and should protect them from social injustice and all forms of exploitation. (v) The State must endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health.

Liberal Principles : (a) The State should endeavour to secure for the citizens a uniform civil code throughout the territory

of India. (b) It must endeavour to provide, within a period of 10 years from the commencement of the Constitution, for free and compulsory education of all children, until they complete the age of fourteen years. (c) The State should regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. (d) It must endeavour to organize agriculture and animal husbandry on modern and scientific lines. (e) The State should endeavour to promote international peace and security; maintain just and honourable relations between nations; foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and encourage settlement of international disputes by arbitration.

These are some of the principles, which the Liberals in India have been commending to the attention of the Government in India. India is one of the very few countries, which have placed respect for international obligations as one of the cherished principles, which she has solemnly undertaken to act upon. Our present foreign policy is based on these high ideals.

The aim of Directives: Article 38 lays down that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of national life. This sums up the aim which the framers of the Constitution had in mind in including the Directive Principles in the Constitution. According to these Directives, a welfare State is the ideal which is to be attained in India. The State must use all its energies for the attainment of the general welfare. Article 38 incorporates a part of the preamble of the Constitution. It makes the real type of democracy as the aim of the State in India. Such a democracy means a democracy which provides, not only political equality but ensures social and economic democracy also. While explaining the Directive Principles, Dr. Ambedkar said, "While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy". By including Directive Principles in the Constitution, it has been prescribed that the Government shall strive to bring about economic democracy. In a parliamentary form of government like ours, different parties may rule the country at different times. The Directive Principles ensure that, whichever the party in power, it will have to respect these Directives and cannot ignore them.

Criticism of the Directive Principles: The Directive Principles are variously criticized. As they are not enforceable by the courts, some critics regard them as useless. They are said to be mere pious wishes or high sounding principles which may serve to mislead the ignorant public and be used as a vote-catching device. They are also described as superfluous because every State

strives to bring about the welfare of its people. Others regard them as meaningless because there is no sense in a sovereign State giving directions to itself. These are said to bind the future with the wisdom of the present. Moreover, some of these principles are of doubtful validity. For example, the necessity of prohibition is not yet fully established because it deprives the State of a huge revenue mostly derived from the rich. Prof. Srinivasan states, "The formation of the Directives of State policy can hardly be considered inspiring. It is both vague and repetitive. The Directives are neither properly classified nor logically arranged. The declaration mixes up relatively unimportant issues with the most vital economic and social questions. It combines rather incongruously the modern with the old and provisions suggested by reason and science with provisions based purely on sentiment and prejudice."¹

Justification and value : The inclusion of Directive Principles in the Constitution is not without precedents. The Irish Constitution also includes a set of such Directives. There are some other countries also who make a constitutional declaration of social and economic policy, e.g. the Constitution of Austria (1929), Spain (1931), France (1936), and Germany (1949). Such principles have also been included in several international agreements. The Atlantic Charter makes a prominent mention of the ideals which should guide the State action. Moreover, it is not right to regard them as useless because there is no legal sanction behind them. In the last analysis, a real sanction behind all laws is the public opinion which is also the sanction behind these Directives. The political and moral sanction is salutary in its own way. If a party in power dare ignore these Principles, in the words of Raghavachariar, it "will certainly have to answer for them before the electorate, when the next election comes." The people in India have the right to judge the performance of a Government in terms of these Directives. During the time of election, the voters have the right to know from a previous government, as to how far it had implemented those principles. They can also ask a Party, aspiring to form a future Government, as to how far it would go in order to secure the realization of these objectives. The inclusion of these Principles in the Constitution, bind parties of the Left as well as the Right, to a particular type of social policy, which is made immune from attack at the hands of the bare majority. As it was not practicable to secure the enjoyment of these objectives at the time of the commencement of the Constitution, the framers of the Constitution have rightly enshrined them as ideals worthy of implementation as soon as possible. A constant reminder of an ideal is useful in its own way.

Although these Directive Principles are not enforceable by courts, these cannot fail to take due notice of them. The Constitution states that the Directive Principles of State policy are *fundamental in*

1. Srinivasan : *Democratic Government in India*, p. 182.

the governance of the country. "This means that all agencies responsible for governing the country should be guided by these Principles. That implies that even the judiciary has to keep them in mind while construing the laws, as they constitute the spirit of the Constitution."¹ The Supreme Court has already taken notice of these Principles in some cases which establish their utility beyond doubt. In the *State of Bihar versus Sir Kameshwar Singh*, the Supreme Court held that the Bihar Land Reforms Act of 1950 was enacted for a public purpose, in accordance with the Directive in Article 39, because its object was to do away with the concentration of big blocs of land in the hands of a few individuals. In the case of the *State of Bombay versus F. M. Balsara*, the Bombay Prohibition Act was declared to have been enacted for a public purpose according to the Directive contained in Article 47 of the Constitution because its objective was to bring about prohibition of the consumption of intoxicating drinks.

Implementation of the Directive Principles : The Congress Government appears to be quite in earnest about implementing these principles. The minimum wage has been fixed in many industries. The Five-Year Plans are meant to raise the standard of living of the common man. The Zamindari System is being abolished everywhere. Equal right of women to property is being granted. The nationalization of the Imperial Bank and the Insurance Companies is meant to enable the State to control capital in the interest of the common man. The foreign policy of India has been boldly tuned for the achieving of international peace and security. Backward Classes and Scheduled Castes are being given special treatment. Panchayats are coming up in rural areas everywhere. Cottage industries are being encouraged. The pace of literacy is being accelerated, although it must be admitted that the country is yet far off from the ideal of a "free and compulsory education for all children until they complete the age of fourteen years." The Executive and Judiciary are being separated, at least partially, in some of the States. Article 31 of the Constitution regarding the Right to private property has been amended twice, to enable the State to acquire private property for a public purpose without an obligation to pay adequate compensation. It may not be necessary to give more examples. No doubt, the Directive Principles are being implemented, but that does not mean that the ideal of a welfare State or economic democracy has already been achieved. The acceptance of socialist society as the ultimate aim by the Congress, is in itself a homage to the spirit underlying the Directive Principles. The sails of the ship of the State in India have been resolutely conditioned for achieving the high objective set forth in the Directives. Much remains to be done. The inclusion of the Directive Principles in the Constitution has already borne some useful results.

1. Joshi : *The Constitution of India* (1952), p. 108.

CHAPTER XXXIII

PRESIDENT OF INDIA

The Constitution of India is parliamentary, with the President as its *formal* and the Council of Ministers as its *real* Executive. In this Chapter, we are concerned only with the President.

Method of Election : Only a citizen of India, who has completed the age of thirty-five years and is qualified for election as a member of the House of people, is eligible for election as the President. No one holding an office of profit under the Government can stand for the office, but this restriction does not apply to any holder of the office of the President, Vice-President, Governor and a Minister of the Union or the States. The President is indirectly elected by the members of an electoral college consisting of the *elected* members of both Houses of Parliament and the *elected* members of the Legislative Assemblies of the States. As far as possible, there is a uniformity in the scale of representation of the different States as well as a parity between the States as a whole and the Union in this election. In order to achieve these two objectives, the principle of giving only one vote to each member of the electoral college has been discarded and a method of weighing votes is introduced, which gives a different number of votes to different sets of persons in the electoral college.

Every elected member of the Legislative Assembly of a State has as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly and if, after taking the said multiples of one thousand, the remainder is not less than five hundred, the votes of each member referred to above are further increased by one. Each elected member of either House of Parliament has such number of votes as may be obtained by dividing the total number of votes assigned to the members of Legislative Assemblies of the States by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half are counted as one and other fractions are discarded.

The above method can be represented by the following formula:

$$\left. \begin{array}{l} \text{The number of votes which} \\ \text{each elected member of the} \\ \text{Legislative Assembly of a} \\ \text{State has} \end{array} \right\} = \frac{\text{Population of the State}}{\text{Total number of the} \\ \text{elected members of the} \\ \text{State Legislative} \\ \text{Assembly}} \div 1000$$

The number of votes which each elected member of either House of Parliament has } =
$$\frac{\text{Total number of votes assigned to the members of the Legislative Assemblies of the States}}{\text{Total number of the elected members of both Houses of Parliament}}$$

In the final result, a fraction exceeding one-half is counted as one and less than one-half is discarded.

The election of the President is held by a secret ballot in accordance with the system of a single transferable vote. The method of proportional representation is, ordinarily, not used where only one man is to be elected. Here the "method of election really amounts to election by preferential vote and not proportional representation".

Under such a method of election, the President may not belong to the party commanding a majority in the House of the People. "He may not even be a member of the most numerous party standing in coalition to form the Government with other parties. The House of the People is totally renewed at irregular intervals—intervals that may or may not coincide with the renewals of the State Legislatures. The Council of States is partially renewed every second year. Within the Parliament, the two Houses may (at some future time) reflect the public opinion and party strength of different points of time. The State Legislatures in India are elected through single-member constituencies by a plurality of votes. Under this system the larger section of opinion in the electorate tends to be over-represented and the minority opinion under-represented. The elected members of the Council of States are elected indirectly from the States and their term of office is independent of the term of the particular body of electors that elected them. The President and the House of the People are both elected for a term of five years, but their term, again, may not be coterminous."¹

Why indirect election ? The President is indirectly elected. A direct election was considered unnecessary because he is only a nominal executive with a few real powers. A directly elected President would not have been content to play only the formal role, which he is expected to do. Moreover, the process would have involved a lot of expense and wastage of time. A direct election would have meant in India a process involving voting by 18 crores of people. An election fever like the one usually witnessed in the U. S. A. at the time of a Presidential election would have been an unnecessary strain on the nation.

1. A. B. Lal (Ed.), *The Indian Parliament*, p. 207.

Tenure and removal : The President is elected for 5 years and is eligible for re-election for as many times as he may choose to stand. The President cannot be removed from office, except by an impeachment for the violation of the Constitution. A charge may be framed in either House of the Parliament, after having given the President at least fourteen days' notice in writing, signed by not less than one-fourth of the total number of members of the House framing the charge. The charge to become valid for investigation must be passed in the form of a resolution for the removal of the President by a majority of not less than two-thirds of the total membership of the House. It will then go to the other House for investigation. At the time of investigation, the President shall have the right to appear and to be represented. If the House investigating the charge also passes a resolution by a majority of not less than two-thirds of its total members, declaring that the charge preferred against the President has been sustained, the President will have to vacate his office.

Emoluments : The President gets a salary of Rs. 10,000/- per month, apart from handsome allowances and free residence. The salary and allowances of the President are determined from time to time by the Parliament, but these cannot be reduced during the term of the holder of that office.

Powers of the President : The powers of the President may be grouped under five categories—(1) executive powers ; (2) legislative powers ; (3) financial powers ; (4) judicial prerogatives ; and (5) emergency powers.

Executive powers : The executive power of the Union is vested in the President and is exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The Supreme Command of the Defence Forces of the Union is vested in the President ; but the exercise of this power is regulated by law. All executive actions of the Government of India are taken in the name of the President. He makes rules for transacting the business of the Government of India and for allocation among Ministers of this business.

There is a Council of Ministers, with the Prime Minister at the head, to aid and advise the President in the exercise of his functions. The Prime Minister is appointed by the President and the other Ministers are appointed by the President on the advice of the Prime Minister. This power of appointing the Prime Minister is formal only. The President is bound to appoint the leader of the majority party in the House of the People as the Prime Minister. If multi-party system develops in the country, with the result that no party usually gets an absolute majority in the popular House, the President as in France, might acquire some discretion in the selection of the Prime Minister. The President also possesses some powers in foreign affairs. He appoints and receives ambassadors. He

can declare war and conclude peace. He negotiates treaties with other powers. These powers are not specifically given to the President in the Constitution, but as all executive power is vested in him these powers also belong to him. Most of the higher appointments are made by him.

The President has got the right to be kept informed regarding the affairs of the Union. It is the duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation. The Prime Minister must furnish any information regarding the administration, as the President may ask for. It is the duty of the Prime Minister, when the President so desires, to submit for the consideration of the Council of Ministers as a whole, any matter on which a decision has been taken by a Minister, but which has not been considered by the Council. Through this right to be kept informed, the President can exercise a great influence over the administration, if he is really a capable person and a strong personality.

Legislative powers of the President : The President is an integral part of the Parliament and no bill can become a law without receiving his assent. Laws are enforced and promulgated by him. He summons and prorogues the Houses and can dissolve the House of the People. He must summon each House to meet in a manner that six months must not intervene between its last sitting in the first session and the date fixed for its first sitting in the next session. The President may address either House of Parliament or both Houses assembled together and for that purpose can compel the attendance of members. Such an address is essential at the commencement of the first session after each general elections to the House of the People, and at the commencement of the first session of each year, when the President is to inform the Parliament about the business to be done in the ensuing session. The President can send messages to either House of Parliament, whether with respect to a bill pending in Parliament or otherwise, which must be considered with all convenient despatch. When there is a difference of opinion between the two Houses, the President can convene a joint sitting of the Houses for resolving differences. There are some Bills which cannot be introduced without his previous consent, and there are others which must be reserved for his approval. He can send a non-money bill for reconsideration, but if it is passed once again, even by ordinary majorities, he cannot refuse assent.

The President also possesses the power of issuing ordinances. An ordinance can be promulgated only during the recess of the Parliament. It must be laid before both Houses of Parliament and will cease to operate, after the expiry of six weeks from the re-assembly of the Parliament, unless it is withdrawn by the President

or declared inapplicable by the Houses earlier. It may be noted that the President is the final judge of deciding when such an ordinance is necessary. No time limit is laid for such an ordinance except the conditions stated above. If such an ordinance is issued on the last day of the Parliament, it can go for at least six months, without any hindrance.

Financial powers : No money bill can be introduced in the House of the People without the previous permission of the President. He orders the budget to be laid before the Parliament every year. No demand for grant can be made, except on his recommendations. He can make advances from the Contingency Fund of India to meet unforeseen expenses, pending approval by the Parliament. He distributes shares of the income tax between the Union and the States, and assigns to Assam, Orissa and West Bengal their shares of the jute export duty. He appoints the Finance Commission to make recommendations on various financial matters and regarding the financial relations between the Union and the States and causes to be laid every such recommendation before each House of Parliament, together with an explanatory memorandum as to the action taken thereon.

Legal immunities and judicial prerogatives : The President is not answerable to any court of law in India for the exercises of the powers and duties of his office, except by way of an impeachment. No criminal proceedings can be started against him during his term of office. Civil proceedings can only be started after he has been served with a two months' written notice.

The President possesses the power to grant pardons, reprieves (stay of execution), respites (awarding lesser sentence than pronounced by courts), or remissions (reduction of sentence to already undergone) of punishment or to suspend, remit or commute (change the nature of) the sentence of any person convicted of any offence : (a) in all cases where the punishment or sentence is by a Court Martial ; (b) in all convictions for an offence against any law relating to which the executive power of the Union extends ; (c) in all cases where the sentence is a sentence of death. Similar powers belonging to any authority of the Armed Forces regarding a sentence passed by a Court Martial or to a Governor of a State are not affected by this power of the President.

EMERGENCY POWERS OF THE PRESIDENT

The emergency powers of the President are considerable and are of great moment. Three kinds of Emergencies are provided for :—

I. Emergency caused by war or internal disturbances : If the President is satisfied that a grave emergency exists, whereby the security of India or any part thereof is threatened, whether by a war or an internal disturbance, the President can declare a

State of Emergency. An Emergency can be declared *even in anticipation* of such a danger. The President is the final judge to decide about the time and necessity of the declaration of such an Emergency. No court of law can inquire into this matter.

Procedure and duration : Such a declaration must be laid before each House of the Parliament and cease to operate at the expiry of two months, unless before this period, it has been approved by resolutions of both Houses of the Parliament. Any such proclamation may be revoked by a subsequent order of the President.

But if the House of the People stands dissolved at the time of the issue of the proclamation or during the two months following, the proclamation can last only for 30 days, after the meeting of the new House, provided the Council of States has given its approval within the prescribed two months. It can continue after that period, only if also approved by the House of the People. Similar procedure will follow in the subsequent two cases of the Emergencies in case of the dissolution of the House.

Effects : The declaration of this Emergency shall have the following effects :—(a) the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power of the State should be exercised ; (b) the Parliament can legislate on any subject enumerated in the State List, thus converting the federal structure of the Constitution into a unitary one ; (c) the President can modify the normal allocation of the revenue of the country between the Union and the States for the financial year ; (d) the State can restrict the fundamental rights contained in Article 19 ; and (e) the President can suspend the right of the enforcement of fundamental rights either in the whole of India or any part thereof during the period of an Emergency.

II. Emergency caused by constitutional breakdown in a State : The Constitution lays down a duty on the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. It was, therefore, considered necessary to arm the President with special powers to make arrangements for the administration of a State, when a constitutional breakdown in that State was threatened. If the president, on receipt of an advice from the Governor of a State or any other source, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, the President may declare a State of Emergency.

Procedure and duration : Such a proclamation must be laid before each House of the Parliament and will cease to operate at the expiry of two months, unless before this expiration, it has been approved by resolutions of both Houses of the Parliament.

Procedure in case of the dissolution of the House is the same as in the case of the first Emergency. Such a proclamation cannot be issued for *more than 6 months at a time* ; but can be extended after every six months up to a total period of *three years*. Each extension requires fresh approval of both Houses. This limitation for six monthly approval and of three years as the maximum period is not imposed in the case of the other two Emergencies. Hence it is not right to state that "*the period and procedure is the same in all the three cases of emergencies.*"

Effects : (a) The President can assume to himself all functions of the Government of the State, except that of the High Court ; (b) can declare that the powers of the Legislature of the State shall be exercised by or under the authority of the Parliament ; (c) when the Parliament is authorized to legislate as under (b), the Parliament can confer the power of the legislation on the President and can also authorise him to delegate such powers to any other authority ; (d) if the House of the People is not in session, the President can authorize expenditure from the Consolidated Fund of India, pending subsequent sanction of such an expenditure by the Parliament ; (e) can restrict the fundamental rights in Article 19 during the Emergency ; and (f) can suspend the right of enforcement of fundamental rights in the whole of India or any part thereof during the period of the Emergency.

III. Financial Emergency : If the President is satisfied that a situation has arisen, whereby the financial stability or credit of India or any part thereof is threatened, he may proclaim a State of Emergency.

Procedure and Duration : Such a proclamation must be laid before each House of Parliament ; and shall cease to operate at the expiration of two months, unless before the expiration of that period, it has been approved by resolutions of both Houses of the Parliament. Procedure in case of the dissolution of the House is the same as in the case of the first Emergency.

Effects : Such a declaration will have the following effects : (a) during the period of the Emergency the President may give directions to any State to observe certain canons of financial propriety and other directions necessary and adequate for the purpose ; (b) a direction may be issued requiring reduction of salaries and allowances of all or any class of persons serving under the Union and the States, including Judges of the Supreme Court and the High Courts ; (c) all money bills in a State may be required to be reserved for the consideration of the President, after these have been passed by the Legislature of a State ; (d) the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power of the State should be exercised ; (e) the President can modify the normal allocation of the country's revenue resources between the

Union and the States for the financial year ; (f) the fundamental rights in Article 19 may be restricted ; and (g) Right to constitutional remedies against fundamental rights can be suspended during the period of the Emergency.

Appraisal of Emergency Powers : The emergency powers are sometimes vehemently criticized. The critics argue that similar powers existed under the Weimar Constitution in Germany and were mis-used by Hitler to destroy democratic institutions in that country. The same was done by Napoleon III in 1852. It is said that they lay too great a burden of deciding about an Emergency upon an individual, i.e., the President. The Emergency provisions regarding a constitutional breakdown in a State are described as a slavish reproduction of notorious Section 93 of the Government of India Act, 1935.

In this connection, we may not forget to note that if similar powers were abused in Germany by Hitler, that itself is not a sufficient reason for their condemnation in India. Our present political conditions are not the same as existed in Germany between 1931-33. The past traditions are also different. Secondly, although the Constitution does not say so clearly, these powers are normally bound to be exercised by the President on the advice of the Union Cabinet. Hence, they are not really the powers of the President as an individual. Thirdly, the emergency powers of the President, at every step, are subject to the powers of the Parliament, which is a popularly elected body. The responsibility of the Union Cabinet to the Parliament is a guarantee against the abuse of these powers. Fourthly, as for the criticism against the suppression of fundamental rights during the Emergency, we may not forget that when the existence of the State itself is in danger because of war, financial breakdown, etc., the State must be armed with all sorts of powers to avert or meet that danger and it is well that, at such a time, restraints are placed on individuals and the State is not bothered by judicial hindrances. In the safety and security of the State, lies the good of the individuals composing it. Fifthly, a similarity between the provisions regarding the constitutional breakdown and Section 93 of 1935 Act is undeniable. But it must be realised that, whereas under the 1935 Act, these powers were used by irresponsible rulers from an outside country, now these powers are used by a responsible set of Ministers, and are subject to the control of the Parliament.

There is, however, one loophole. The President may issue a declaration of an Emergency after dissolving the House of the People. He may even dismiss the Ministers and appoint others, who are entirely dependent on him. For about two months, he can carry on, even without the approval by the Council of States. If he is able to secure the approval by the Council within two months, he can carry on according to his sweet will for a further period of six

months and a little more. But that is only a very remote possibility. Probably, a provision requiring the immediate summoning of the House of the People after such a declaration, might have been one of the safeguards against this danger.

How far the powers of the President are real? It is a moot-point whether the President is purely a constitutional head or has been endowed with some powers, which he may exercise in his discretion. In all those cases, where the President is bound to accept the advice of the Council of Ministers, his role is purely formal or constitutional. In such cases, his powers are not real. But in all those matters, where he can act without obtaining the advice of the Cabinet, or can act against the advice tendered, the powers of the President must be described as real. Conventions are well established in England that the King invariably acts according to the advice of the Cabinet. A truly parliamentary democracy permits no other role on the part of the formal head of the State. Thus the system of executive in India is parliamentary to the extent the President acts according to the wishes of the Cabinet. The system is presidential in so far as the President can perform executive acts, either without consulting the Cabinet or against its wishes.

According to Art. 74 (1), "there shall be a Council of Ministers to aid and advise the President in the exercise of his functions." The intention of this article appears to be that the President must seek the advice of the Cabinet in the performance of all his public acts. The words 'his functions' in Art. 74 (1) evidently means *all* his functions. This interpretation is borne out by Art. 163 (1), which is a corresponding provision regarding the Governor and States, "There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, *except in so far as he is or under this Constitution required to exercise his functions or any of them in his discretion.*" The addition of the italicised words in Art. 163 and their absence in Art. 74(1) shows that, whereas there are some functions which the Governor may perform without taking the advice of the Council of Ministers, there is no such field with regard to the President. In other words, the President is bound to take the advice of the Council of Ministers in the discharge of each and every public function that he may perform.

Having concluded that the President must seek the advice of the Council of Ministers in the performance of every public function, another question that remains to be answered is, whether the President is bound to accept such an advice. There is nothing in Art. 74 (1) or in any other provision of the Constitution to suggest that the acceptance of the advice of the Cabinet is obligatory for the President. Thus, the President is not legally bound to accept such an advice. The Constitution has not even laid the

necessity of counter-signature for the acts of the President by the Minister concerned. In England and France, the heads of the States have been rendered nominal because of the necessity of counter-signature. The absence of such a provision further shows that the framers of the Constitution did not like to bind the President legally for accepting the advice of the Cabinet.

There is an overwhelming evidence in the Constitution to show that the President must *ordinarily* act according to the advice of the Council of Ministers. Firstly, the form of the Executive in India is parliamentary, in which the real power lies in the hands of the Council of Ministers responsible to the House of the People. In such a form of government, the role of the President cannot but be analogous to that of the English King. Responsibility and power must go together. The Council of Ministers cannot be made responsible for powers exercised by somebody else or against their advice. Secondly, the indirect election of the President also shows that he was not intended to be a rival of the Cabinet. Thirdly, the power of appointing the Prime Minister which is vested in the President is purely formal because this honour must go to the majority leader of the House of the People. Fourthly, the conventions which are already well-established in England—the home of parliamentary government—conclusively show that no other role is consistent with the responsibility of the Cabinet to the Parliament for the acts of the Government. Dr. Rajendra Prasad in his article on "The new Constitution of India" in *Parliamentary Affairs* of September, 1950, writes, "The President has ordinarily to act in accordance with the advice tendered by his Minister." Dr. Ambedkar said, "The President occupies the same position as the King under the English Constitution. He is the head of the State ; but not of the executive. He represents the nation, but does not rule the nation. His place in the administration is that of an ornamental device on a seal by which the nation's decisions are made known." "The theory of parliamentary government is that all powers and functions are exercised by a Cabinet responsible to Parliament. The principle of parliamentary democracy requires that the President should act *only* on the advice of a Ministry enjoying the confidence of the House."¹

There is another set of provisions in the Constitution which show that, although the framers of the Constitution wanted the President to act ordinarily according to the advice of the Council of Ministers, yet they wanted that in *exceptional cases*, the President should be able to disregard or go against the advice tendered by the Ministers. As already stated, Art. 74(1) does not bind the President legally to accept the advice. Moreover, the framers have omitted to provide for the necessity of counter-signature for the acts of the President by the Minister concerned, which also shows that a scope has been left where he may exercise his discretion. There

1. A. B. Lal (Ed.) : *The Indian Parliament*, p. 221.

are a few other provisions in the Constitution which also suggest that the President may go against the advice tendered by the Cabinet. Firstly, Art. 86(2) provides, "The President may send messages to either House of Parliament, whether with regard to a bill then pending in the Parliament or otherwise." Secondly, the proviso to Art. 111 states, "The President may return non-money bills for reconsideration to the Parliament." Thirdly, apart from the duty of the President to address the Parliament at the commencement of the first session after each general election to the House of the People and at the commencement of the first session each year in order to inform the Parliament about the business to be undertaken in the ensuing term or session, Art. 86(1) gives the President the right to address the Parliament whenever he likes. Fourthly, under Art. 78(c), the President can compel for the consideration of the Council of Ministers, any matter on which a decision has been taken by a Minister, but which has not been considered by the Council. The exercise of such a power as contemplated in Art. 78(c) cuts at the root of the collective responsibility of the Council of Ministers. It amounts to censuring the Minister concerned and cannot be relished by the Prime Minister.

The powers conferred on the President by Articles 86 (2), proviso to Art. 111, 86 (1) and 78 (c) have never been exercised by the King in England for the last 200 years or so, or by the President of France under the Third Republic. Such powers are possessed and exercised by the American President. They are presidential in nature because they can be used against the wishes of the Cabinet. There is no sense or meaning in the actual exercise of such powers, unless they are used against the advice or wishes of the Cabinet. Sending of a message on a pending bill, returning a non-money bill for reconsideration, special right to address the Parliament, and the right to compel joint consideration by the Ministers of the decision of a Minister have relevancy, only when such rights are exercised against the wishes of the Cabinet. The conclusion is obvious that the framers of the Constitution have clearly left a scope, when the President may disregard the advice of the Cabinet in extraordinary cases. No doubt, the scope of such functions, where the President may go against the wishes of the Cabinet is limited indeed, but such a scope is there. The method of election of the President is such that it is possible for a person to be elected, who belongs to a party which does not command a majority in the House of the People. At present, the Prime Minister and the President belong to the same party and there is a perfect harmony and understanding between the two. But if in future, multiple-party system develops in the country or otherwise, such a person is elected as President who belongs to a different party the discretionary powers of the President described above, will present a serious threat to the unity of the executive.

It may, however, be added that no wise President will make use of such extraordinary powers lightly because any conflict of the

President with the popular Ministry is bound to drag him into a very serious constitutional crisis. If the Ministers concerned tender resignation on the refusal of the President to accept their advice, the former may not be able to form an alternative Ministry. The next remedy is the dissolution of the House of the People. In the ensuing election, the President will have to justify his intervention or refusal to accept the advice of the Ministers against heavy odds. Fighting the general elections is a task for which the President is hardly fitted. If the old Council of Ministers comes into power again, there will be no option for the President, but to resign. The power of impeachment of the President which is vested in the hands of the Parliament, which itself is under the control of the Cabinet, is an additional guarantee that no President can ordinarily invite a clash with the Cabinet. Thus the scope of the use of an active discretion on the part of the President is extremely limited. Such an interference on the part of the President in a parliamentary government is justified only, when, in the words of Dr. Jennings, "there is an unconstitutional Ministry and a corrupted Parliament", i. e., when neither the Cabinet nor the Parliament represents the real wishes of the nation.

Really speaking, the position of the President is that of influence and not of power. He possesses the very important right to be kept informed about the affairs of the Government. He signs all top-ranking decisions of the Government of India. "Before signing, he can raise objections, demand elucidations, and even induce reconsiderations." In the words of Bagehot, he possesses "the right to be kept informed, the right to encourage and the right to warn." His position is like that of the English King or the French President. He is a constitutional King for five years. It is useless to compare him with the American President, who is the real executive head of a presidential government. If the Indian President is a strong personality, his influence on the administration is bound to be considerable. If multiple party system develops in the country on the lines of France, the President might acquire some real choice in the selection of the Prime Minister. The executive power of the union really belongs to the Cabinet. Such a power has been vested in an individual, i. e., the President to meet an emergency. We may finally conclude :

- (1) The President is not legally bound to accept the advice of the Cabinet in all matters.
- (2) The framers of the Constitution intended that he should ordinarily act according to the advice of the Cabinet. It was expected that conventions would develop in due course to bring about such a position.
- (3) A scope is clearly left by the Constitution when the President might go against the advice of the Cabinet. Such a course may be taken, when neither the Cabinet nor the Parliament truly represents the people.

VICE-PRESIDENT

The Constitution provides a Vice-President for India. The Vice-President is elected by the members of both Houses of the Parliament, assembled at a joint meeting, in accordance with the system of proportional representation by means of the single transferable vote and the voting at such an election is by secret ballot. All disputes regarding the election of the Vice-President are to be decided by the Supreme Court, whose decision is final. He cannot remain a member of any Legislature, after his election to that office. No person is eligible for election as Vice-President : unless he is a citizen of India ; has completed the age of thirty-five years and is qualified for election as a member of the Council of States. A person holding a government job is not eligible for election ; but this restriction does not apply to the President, Vice-President and a Minister of the Union or the States.

The Vice-President holds office for 5 years from the date on which he enters upon his office, unless he resigns or is removed earlier. A Vice-President can be removed from office by a resolution of the Council of States passed by a majority of all the members of the Council and agreed to by the House of the People. No such resolution can be moved, unless a fourteen days' notice has been given to the Vice-President.

Functions : The Vice-President is the *ex-officio* Chairman of the Council of States and as such performs all the usual functions of a presiding officer, e.g., conducting the proceedings, enforcing discipline, etc. He is permitted to cast his vote in the Council only in case of a tie. He is entitled to the salary and allowances attached to the office of the Chairman of the Council. When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President deputizes for him. In the event of death, resignation or removal of the President, the Vice-President is to act as President, till the new President is elected and assumes office. Election of the President must be held within six months of the date on which the office falls vacant. This provision is quite different from the corresponding provision in the U.S.A., where the Vice-President, in such a case, enters into the office for the remaining term of the President, as happened in the case of Mr. Truman after the death of Mr. F. Roosevelt. During the period, the Vice-President acts as the President, he enjoys all the powers and immunities of the President. He is also entitled to the present emoluments, allowances and privileges of the President, till the Parliament lays down different sums for the officiating period. Dr. Radhakrishnan was elected as the first Vice-President of India.

CHAPTER XXXIV

COUNCIL OF MINISTERS

After having studied the nominal executive in the preceding Chapter, we now turn to the Council of Ministers, which is the real executive of the Union.

Formation and life of the Council : The Council of Ministers is popularly known as the Cabinet. Its chief is designated as the Prime Minister. The Prime Minister is appointed by the President. The remaining Ministers are also appointed by the President, but on the advice of the Prime Minister. The appointment of the Prime Minister by the President is a mere formality. The President has got no choice but to offer the Prime Ministership to the leader of the majority party in the House of the People, and if there is no such party, to a man who is able to gather a majority of the members of the House under him. The President cannot appoint any Minister against the wishes of the Prime Minister. This does not mean that in the choice of Ministers, the Prime Minister is absolutely free. He is bound by various considerations. The party standing of some persons makes their inclusion in the Cabinet unavoidable. In the Council of Ministers, the Prime Minister cannot fail to include representatives of the important minorities, including the Scheduled Castes. He must also give representation to various geographical regions in the country in order to make the Cabinet as broad-based as possible. Barring such limitations, the Prime Minister is free to select his team as he pleases. As already stated, the right of the President to choose the Prime Minister is conditioned by the party complexion of the House of the People. But if multiple party system develops in the country on the lines of France, the President might acquire some choice in the selection of the Prime Minister.

The Cabinet holds office during the pleasure of the President, which means that the latter can dismiss a Minister or the Ministers at any time he likes. This again is a formal provision. The life of the Cabinet is really in the hands of the House of the People. No President can, without involving himself into constitutional difficulties, dismiss a Cabinet which enjoys the confidence of the House of the People; nor can he dismiss a Minister whom the Prime Minister wants to retain. The provision is introduced to enable the President to get rid of a Minister guilty of dishonesty, corruption, etc. In extreme cases, this power may be used by the President to dismiss a Cabinet, which does not, in his opinion, enjoy the confidence of the people.

Most of what has been stated above and follows is not specifically provided in the Constitution, but depends upon conventions prevalent in the British Constitution, which is the mother of the Cabinet form of Government, and on the model of which our Cabinet is evidently shaped.

✓ **The importance of the Prime Minister :** The Prime Minister is the key-stone of the Cabinet arch. In relation to other Ministers, it is not right to describe him as *primus inter pares*, i.e., first among the equals. He is more like a moon amongst stars. The Prime Minister enjoys a unique position of importance, prestige and power because of the following factors :—

Firstly, the Cabinet is formed by the Prime Minister. It continues, as long as he chooses to go on with it and breaks when he so decides. He is thus pivotal to the formation, working and the end of the Cabinet. Secondly, he is the chairman of the Cabinet. The agenda for the meetings of the Cabinet is decided, primarily, by him. Thirdly, the Prime Minister is the central figure during the general elections. It is not wrong to say that the general elections are partly fought over the personalities of the prospective Prime Ministers. It is a matter of common knowledge that the last general elections in India were won for the Congress, mostly because of the personality of Mr. Jawahar Lal Nehru. Some people openly said that they were voting for Mr. Nehru and not for the Congress. Fourthly, he is a link between the Cabinet and the President. The official etiquette demands that the decisions of the Cabinet should be communicated to the President by the Prime Minister alone. He has the duty as well as the right to keep the President informed about the decisions of the Cabinet. Fifthly, he is the leader of the majority party in the House of the People. The remaining members of the party are bound in discipline and loyalty to him. This enables him to get enacted any law on which he is determined.

Sixthly, he is the chief spokesman of the Cabinet to the House. The most important policy speeches are delivered by him. When a Minister has displeased the House or is otherwise in difficulties with the House, the Prime Minister usually intervenes and comes to the rescue of such a Minister. Seventhly, the most important appointments in the country are made by the Prime Minister. He may and usually does consult, at least, some of his senior colleagues in filling the offices like Governorships, but there is no heart-burning, if he prefers to make a personal selection. Eighthly, he co-ordinates the work of the various Ministries and irons out differences between them. In England the Prime Minister does not keep with him any specific portfolio in order to discharge the co-ordinating duties effectively. But in India, Mr. Jawahar Lal Nehru has kept the portfolio of External Affairs to himself from the very beginning. All this makes the Prime Minister the key-man in the Cabinet.

But this does not mean that he is the master of the Cabinet. His real position is that of a leader, and not of a boss. He cannot, for a long time, afford to ignore the opinions of his colleagues. His success depends upon his capacity to carry his colleagues with him, and not his power to coerce them. Ultimately it all depends upon the personality of the holder of the office of the Prime Minister. If he possesses an outstanding personality like our Prime Minister he is sure to dominate over the remaining Ministers, but the same cannot be said with regard to a weak man.

Cabinet and the House of the People : Legally speaking, the Cabinet is responsible to the House of the People. The House is the legal master of the Cabinet. But in actual practice, this position has been reversed. In fact, the Cabinet leads and the House follows. The Cabinet is sometimes, even accused of following dictatorial methods in its dealings with the House. It is often complained that the members of the House have simply been reduced to the position of drum-driven cattle. They are in the House only to say 'yes' or 'no' to the decrees of the Cabinet. The House simply places its legislative seal on the decisions of the Cabinet. The Cabinet has acquired this dominating position because of its party strength in the House. The members of the House belonging to the party of the Cabinet are bound in discipline and loyalty to the members of the Cabinet. If they go against a decision of the Cabinet, they are sure to displease the party bosses and may even be subjected to a disciplinary action. All this makes it extremely difficult for an ordinary member of the party of the Cabinet to go against its wishes. Moreover, the right of dissolution is a standing threat for the rank and file of the members of the House not to cross swords with the Cabinet.

But "it is equally true that the Cabinet cannot afford to ride rough-shod over the wishes and sentiments of the Parliament. If it does so, the result might be a revolt and split within the party. The Cabinet has constantly to keep its fingers on the pulse of its followers, and the Parliament as a whole, and it must beware of provoking an open conflict. Within the short time since the Independence, the Cabinet had to give in to strongly declared wishes of the Parliament in several matters, e. g., adoption of Hindi rather than *Hindustani* as the official language, acceptance of *Vandemataram* as the national song on a footing of equality with '*Jana gana mana*' and the expression of its willingness to make reasonable compromises on details of the Hindu Code Bill."¹

Principles on which the Cabinet works : Like its prototype in England, the Cabinet of India works on the basis of some well-established principles. In the first place, the Cabinet performs its duties under the leadership of the Prime Minister. Secondly, it is responsible to the House of the People and not to the Council

1. Sharma, M.P. : *The Government of the Indian Republic*, p. 135.

of States. It is a condition precedent to its holding office that it should, all the time, enjoy the confidence of a majority of the members of the House. The Cabinet must resign or face the general elections, the moment it ceases to command a majority in the House. Thirdly, every Minister must be a member of either House of the Parliament or must become one within six months of his appointment, failing which, he will have to vacate his office. Fourthly, the Cabinet is armed with the right of dissolution over the House of the People. The Prime Minister may request the President to dissolve the House and such a request is usually conceded, otherwise the President might face constitutional difficulties. The Prime Minister may make this request, when he finds that the Cabinet and the House do not see eye to eye with each other, or when he wants to have the verdict of the electorates, on a momentous issue, on which he wants to act, but has no mandate from the people. Dissolution is a threat in the hands of the Cabinet to make the House behave with the necessary responsibility. If a dissolution is ordered, every member of the House will have to seek election again, which involves a lot of expense and a chance not to be elected again. The right of dissolution gives stability to the Cabinet. The members of the House behave with a sense of responsibility and can dare not toy with the life of the Cabinet because they can kill the Cabinet only by committing suicide. Dissolution is a method by which the Cabinet can put its case, against the House, for the verdict of the voters. It is an appeal from the legal sovereign to the political sovereign.

Fifthly, the Cabinet is collectively responsible to the House. The Ministers come into office and go out of it as a team. Every Minister is responsible for the acts of his colleagues. They are not supposed to express their differences in public. After a decision is arrived at, all the members of the Cabinet are equally responsible for it, including those who, in the Cabinet meeting, might have argued against the decision. If a Minister is not prepared to share responsibility for the decision, the only honourable course for him is to resign. Dr. Shyama Prasad Mukerjee and Mr. K. C. Neogi resigned from the Cabinet, when they did not see eye to eye with the Prime Minister in the matter of the Indo-Pakistan relations. Similarly, Dr. John Mathai left office, when he did not agree with the Prime Minister in setting up the Planning Commission. This collective responsibility does not however mean that the whole Cabinet is responsible for the mal-administration or corruption of a Minister. Such a Minister may be dismissed by the President or the Prime Minister may politely ask him to resign. If the dismissal is not considered advisable, and the Minister is not prepared to resign, the Prime Minister may tender his own resignation, which implies the resignation of the entire Cabinet. In the reconstituted Cabinet the Prime Minister may not include that undesirable Minister. Because of this collective responsibility, if the House chooses to censure only a particular Minister, the whole Cabinet may resign.

The collective responsibility of the Cabinet to the House is possible because of the party complexion of the Cabinet. Usually all the members of the Cabinet belong to the same political party. If outsiders are included in the Cabinet an understanding is previously reached to work a common programme. Fifthly, an utmost secrecy is maintained about the Cabinet proceedings, unless otherwise agreed. This is necessary in view of the collective responsibility of the Ministers. Secrecy is also necessary because of the magnitude of importance of the problems usually discussed at the Cabinet level. It enables the Cabinet to appear before the President, the Parliament and the people as a team and thus gives it an added strength.

Sixthly, the Cabinet works on the basis of the portfolio system. Each Cabinet Minister is usually in charge of a separate Department. All administrative decisions in matters of detail are normally taken by the Minister alone. But problems of policy, and inter-Departmental matters are usually considered in the Cabinet meetings, which are held every week and even more frequently when necessary. And lastly, the Cabinet works with a secretariat of its own and is assisted by a separate Secretary.

✓ **Powers and functions of the Cabinet :** The Cabinet is the real executive of the land. The powers of the President are, in reality, the powers of the Cabinet. Ordinarily, the actual decisions of the Government are taken by the Cabinet, and the President merely signs on dotted lines. The address, which is delivered by the President at the beginning of each Parliament and in the first session every year is really prepared by the Cabinet. The general policy which guides and shapes the entire work of the Union is laid down by the Cabinet. Its powers in executive, legislative and financial matters are enormous. All executive decisions are those of the Cabinet. All big appointments are really made by it. The foreign policy is laid down by the Cabinet. All important bills are introduced by the Cabinet. No private bill, which is not supported by the Cabinet, has any chance of becoming a law. Because of the majority at its back in the House of the People, the Cabinet gets all the bills sponsored by it easily passed. The time of the Parliament is also regulated by the Cabinet. It is for the Cabinet to decide, what expenditure is to be incurred on the affairs of the Union and how that money is to be raised, which taxes are to be levied and which not. A demand for a grant can come only from the Cabinet. Thus, the Cabinet possesses almost a complete control over the budget of the country.

The Cabinet, not only enunciates policy and gives it a formal shape in the form of legislation, it is also its function to ensure the actual execution of that policy. For that purpose, every member of the Cabinet is placed in charge of a Department of the Government of India. The policy, which the Department must follow and

execute, is the policy of the Cabinet or the Minister-in-charge. It is the duty of the Services to implement that policy. The Minister possesses disciplinary control over the Servicemen working under him. This enables a Minister to correct and punish, if necessary, deviations and defaults in the execution of the policy laid down by him.

All these powers have made the Cabinet the steering-wheel of the ship of the State. The Cabinet is, in practice, the Government of India. The voice of the State, at a given time, to all intents and purposes, is the voice of the Cabinet.

بیسویں ستمبر ۱۹۴۷ء

CHAPTER XXXV

PARLIAMENT OF INDIA

The Union Legislature is called the Parliament. It consists of two Chambers—the Council of States and the House of the People.

Each House of the Parliament must be summoned to meet so that six months shall not intervene between its last sitting in one session and the date fixed for its first sitting in the next session. Subject to this condition, the President is free to summon the Houses or either House to meet at any time and place, he thinks proper. The President can prorogue the Houses or either House and can dissolve the House of the People. The President may address either House of Parliament or both Houses assembled together and for that purpose can require the attendance of the members. The President may also send messages to either House regarding bills, which must be expeditiously considered. At the commencement of the first session after each general election to the House of the People and at the commencement of the first session of each year the President must address both Houses of Parliament assembled together and inform the Parliament about the business to be transacted. Every Union Minister and the Attorney-General of India shall have the right to take part in the proceedings of either House, any joint sitting of the Houses and any committee of Parliament, of which he may be made a member, but shall not, by virtue of this provision only, be entitled to vote. No person can be a member of both Houses. If a member of either House is absent from all meetings thereof, for a period of sixty days, his seat may be declared vacant by the House. A person cannot be chosen as a member of either House : (a) if he holds a Government job ; (b) if he is of unsound mind ; (c) if he is an undischarged insolvent ; (d) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State ; and (e) if he is so disqualified by any law made by the Parliament. The question whether a person is qualified to become a member of either House or not is to be decided by the President finally, according to the opinion of the Election Commission.

There is freedom of speech in the Parliament. No member of the Parliament is liable to any proceedings in any court, in respect of anything said or any vote given by him in the Parliament or any Committee thereof, and no person is so liable in respect of the publication by or under the authority of either House of Parliament of any report, concerning the proceedings of the Parliament. In all other respects, the powers, privileges, and immunities

of the members of each House shall be such as are laid down by Parliament from time to time, and until this is done, shall be those of the members of the House of Commons of the United Kingdom. Members of either House of Parliament are entitled to receive such salaries and allowances as may be fixed by Parliament from time to time. One-tenth of the total membership of a House constitutes the quorum. If at any time, the quorum is not complete, the House should either adjourn or suspend the meeting till there is a quorum. Ordinary decisions in either House require a majority of the members present and voting.

COUNCIL OF STATES

The Council of States is the Upper House of the Parliament. Its membership is not to exceed 250, out of which 12 members are to be nominated by the President from persons possessing special knowledge or practical experience with regard to matters like literature, science, art and social service. The remaining seats are to be distributed amongst the States, out of which 220 have been allotted in accordance with the provisions contained in the Fourth Schedule as substituted by the Constitution (Seventh Amendment) Act, 1956, s. 3. The representatives States are indirectly elected by the *elected* members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote. The States are not provided with equal representation in the Council, as is done in other federations. Equal representation was not considered desirable because of the great differences in areas and populations of the different States. According to the Fourth Schedule, seats in the Council of States are distributed among the various States, as follows :

Andhra Pradesh	...	...	...	18
Assam	...	...	...	7
Bihar	...	...	...	22
Bombay	...	...	...	27
Kerala	...	...	...	9
Madhya Pradesh	...	...	...	16
Madras	...	...	...	17
Mysore	...	...	...	12
Orissa	...	...	...	10
Punjab	...	...	...	11
Rajasthan	...	...	...	10
U. P.	...	...	...	34
West Bengal	...	...	...	16
Jammu & Kashmir	...	...	...	4
Delhi	...	...	...	3
Himachal Pradesh	...	...	...	2
Manipur	...	...	...	1
Tripura	...	...	...	1
Total				220

Thus only 220 seats out of 238 elected seats have so far been allotted. The remaining 18 seats have been kept in reserve for later adjustments.

No person can be a member of the Council, unless he is a citizen of India and is not less than 30 years of age, and possesses such other qualifications as may be prescribed for that purpose by the Parliament. The Council of States is a semi-permanent body and is not subject to dissolution. One-third of its members retire after every second year, which gives a member a span of as many as six years. The Vice-President of India is the *ex-officio* Chairman. The Deputy Chairman is elected by the Council and can be removed by it by a resolution passed by a majority of the total members of the Council. Such a resolution cannot be moved, unless at least 14 days' notice has been given to the Deputy Chairman of the intention of some members to move the resolution. While any resolution for the removal of the Deputy Chairman from his office is under consideration, he cannot preside at such a meeting, although he can be present. He can speak on the resolution, but has no right to vote.

HOUSE OF THE PEOPLE

The House of the People is the Popular Chamber of India. It is elected on the basis of adult franchise, *i.e.* every citizen who is not less than 21 years of age and is not otherwise disqualified on the grounds of non-residence, unsoundness of mind, crime or corruption or illegal practices shall be entitled to vote. This provision of universal adult franchise for the election of the Popular House of India may be described as the fountain-spring of democracy. The system of communal or separate electorates has been finally given up. There is only one general electoral roll for every constituency. For a period of ten years, seats have, however, been reserved for the Scheduled Castes and the Scheduled Tribes. The President is authorised to nominate not more than two members of the Anglo-Indian community to the House, if he is of the opinion that the community is not adequately represented. For the purpose of the election of the House, the whole of India is divided into territorial constituencies. It is provided that there should not be more than one member for every 500,000 of the population. The ratio between the number of members allotted to each territorial constituency and its population is kept the same throughout India as far as practicable.

Allocation of seats in the House of the People

Andhra Pradesh	...	...	...	43
Assam	...	...	...	12
Bihar	...	...	...	55
Bombay	...	...	...	66
Kerala	...	...	...	18
Madhya Pradesh	...	...	...	36
Madras	...	...	...	41
Mysore	...	...	...	26
Orissa	...	...	...	20
Punjab	...	...	...	22
Rajasthan	...	...	...	22
Uttar Pradesh	...	...	...	86
West Bengal	...	...	...	34
Jammu & Kashmir	...	...	...	6
Delhi	...	...	...	5
Himachal Pradesh	...	...	...	4
Manipur	...	...	...	2
Tripura	...	...	...	2
Total				500

Qualifications of members and tenure : A person is not qualified to be a member of the House, unless he is a citizen of India, is 25 years of age and possesses such other qualifications as may be prescribed for that purpose by the Parliament. The ordinary life of the House of the People is 5 years, unless it is dissolved earlier by orders of the President. Its life can also be extended beyond 5 years by the Parliament for a period not exceeding one year at a time while a Proclamation of Emergency is in operation, but this extension cannot be, in any case, beyond a period of six months after the Proclamation of Emergency is over.

The Presiding Officers : The House of the People has a Speaker and a Deputy Speaker elected by and from its members. The Speaker or the Deputy Speaker may be removed from his office by a resolution of the House passed by a majority of the members of the House. No such resolution can be moved, unless at least 14 days' notice has been given. In the absence of the Speaker, the Deputy Speaker presides. The Speaker or the Deputy Speaker, as the case may be, cannot preside while a resolution for his removal from office is under consideration, though he can be present. The Officer against whom such a resolution is proceeding can take part in the proceedings of the House and is also entitled to vote in the first instance on the resolution, but not so in case of an equality of votes.

Speaker of the House of the People : The House of the People represents the voice of the nation. It is but natural that its chairman should enjoy a position of unique importance. As has been stated more than once in earlier pages, the working of Parliamentary government in India is being shaped on the lines of England. As it is widely desired that the office of the Speaker in India should also be moulded on the lines of the Speaker of the House of Commons, it may be necessary to make some reference to the conventions, which go to regulate the office in England.

In England, it is a well-established convention that the Speaker, immediately after his election to that high office, begins to behave as a non-party man and becomes neutral in politics. This is considered necessary in order to enable him to command the confidence of all the parties in the House, more so of the Opposition parties. In order to emphasize and bring about the neutrality of the Speaker, some other conventions are also observed in England regarding his election, etc. Firstly, the name of the Speaker, at the time of his election, is proposed and seconded by two private members in order to emphasize that he does not belong to any particular political party. Secondly, at the time of the election to Speakership, his office is not contested, and so long as the present occupant desires and is competent to perform the duty of the office, he is allowed to continue. Thirdly, in the general elections which follow, no candidate contests his seat to the House.

In India, the conventions aiming at the neutrality of the Speaker have not yet been fully established. Even the Legislative Assembly of India during its working of 25 years or so was not able to establish any clear-cut conventions. There is, however, a consensus of opinion in the country that we in India should also observe the conventions followed in England regarding the Speaker in order to impart real dignity to that office. The resolutions passed by the Speakers' Conference in India also commended the desirability of establishing such conventions. In this matter, Mr. Purshottam Das Tandon had throughout been holding a contrary view. He was a Speaker of the Lower House in U. P. for many years and was of the opinion that a Speaker could work as a partyman outside the House and could yet conduct proceedings in an impartial manner. But these views of his do not generally find favour.

The functions of the Speaker are varied and important. As a chairman of the House, he is to conduct its proceedings and maintain discipline for that purpose. He has to decide all questions of procedure arising in the House on which his decision is final. It is for him to decide the order of the speakers. As a custodian of the rights and privileges of the House, he must see that the privileges of the members are not transgressed and the House is treated with the dignity it deserves. It is for the Speaker to decide

finally whether a bill is a money bill or not. In order to perform all these functions successfully, it is most desirable that the Speaker should be a person who commands the confidence of all sections of opinion in the House. This can be possible only if the conventions regarding neutrality of the Speaker are fully observed.

COMPARATIVE POWERS OF THE COUNCIL AND THE HOUSE

As the House of the People is the Popular House directly elected by the whole voting population of India, its powers are bound to be greater than those of the Council of States, which is the Upper Chamber and is indirectly elected. But in order to assess their comparative strength correctly, it may be necessary to understand their powers as under :—

(i) **Regarding money bills :** The money bills can originate only in the House of the People. Thus there is absolutely no initiative left with the Council in money matters. In case of dispute, whether a bill is a money bill or not, the Speaker of the House decides the question ; and his decision is final. After a money bill is passed by the House, it must go to the Council. If the bill is returned by the Council to the House within 14 days with some alterations or amendments, it is entirely for the House to accept those recommendations or not. If the bill is not returned within 14 days by the Council, it is taken to have been passed by both the Chambers at the expiration of that period, in the form in which it was passed by the House of the People. Thus on money bills, the powers of the Council are almost insignificant. It possesses only a *suspensory veto for 14 days*. The powers of the Council on money bills are even less than those of the House of Lords in England, which can delay such a bill for a month. It is a time-honoured privilege of a popular House to control the purse of the nation, and the same has been done in India.

Regarding non-money bills : The non-money bills can originate in either of the two Chambers. No such bill can come on the Statute Book unless and until it has been passed by both the Houses. From this, it is not to be concluded that the powers of the two Chambers are co-ordinate and co-equal on non-money bills. This is not so. It all depends upon the method of settling differences. Our Constitution provides a method for resolving differences between the two Houses, which is weighed against the Council, and gives the House an advantageous position. It is provided that if a bill has been passed by one House and is rejected by the other House, or the Houses have finally disagreed as to the amendments to be made in the bill, or more than six months have elapsed from the date of the reception of the bill by the other House without the bill having been passed by it, the President may call a joint meeting of the two Chambers for resolving differences.

In this joint meeting, the fate of the bill is decided by a majority of the total number of members of both Houses present and voting.

In a joint meeting, where matters are to be decided by a majority vote, the Council is clearly at a disadvantage because its total membership is half of the full strength of the House. The initiative for calling a joint meeting lies with the President. In actual practice it means that the initiative belongs to the Cabinet, which itself is under the control of the House, or rather is a partisan on the side of the House. Thus in the last analysis, the initiative for calling a joint meeting also belongs to the House. If a non-money bill is passed by the Council, and is rejected by the House, the Cabinet may not feel the necessity of calling a joint meeting. On the other hand, if a bill is passed by the House and is rejected by the Council even earlier than after 6 months, or so drastically amended as to be absolutely unacceptable to the House, the Cabinet might advise the President to call a joint meeting immediately thereafter. The procedure is so shaped that the Council can upset a legislative programme of the House for 6 months, after which the House may insist on a joint meeting—a demand which the President cannot ordinarily, refuse. Thus on non-money bills, the Council can impose a *suspensory veto for a little over six months*. This makes the position of the Council secondary even on non-money bills. The House of Lords is stronger even in this matter because it can delay a non-money bill for one year.

Control over the Executive : It is expressly stated that the Council of Ministers is responsible to the House of the People. A no-confidence motion of the House against the Cabinet sounds its death-knell. This extreme power is not given to the Council, although it can influence somewhat the working of the Executive by asking questions and supplementary questions, and by moving resolutions and adjournment motions. It is always advisable not to give such a power to the Second Chamber because otherwise the Cabinet has to please two masters of different constitutions and ideas and the result is that the Cabinet is rendered weak and even unstable, as was the case in France under the III Republic.

Miscellaneous Powers : There are, however, some miscellaneous powers, which are equally shared by the House and the Council, and where the position of the two is that of equality. In the procedure regarding Constitutional amendments, election and impeachment of the President, removal of the Supreme Court and High Court Judges and emergencies the two Chambers have equal powers.

Estimate of the Council of States : Two diametrically opposite views are expressed about the powers of the Council of States. There are some writers, who consider it as one of the weakest Second Chambers in the world. Those who hold this view take their stand on the following grounds. Firstly, on money bills, the

Council of States possesses only a suspensory veto for 14 days. Secondly, on non-money bills, the Council of States can only delay legislation for about six months because, they argue, in the joint meeting of the two Houses, the Lower House is bound to get its will prevailed, in view of the largeness of its members.

There are others, who argue that the Council of States has been endowed with a large set of powers. The miscellaneous powers, referred to above, are extraordinary in nature and are rarely enjoyed by the Second Chambers in other countries. Moreover, the presumption that in the joint meeting the will of the Lower House is bound to prevail is wrong. It is not necessary that the political party which commands a majority in the Lower House, may also be the largest party in the Council of States as at present. As the two Houses are elected at different times, it is possible that, at some future date, the strength of the parties in the two Houses may be different. Under those circumstances, the Council of States may be in a position to obstruct the legislative programme of the Lower House. This point may be illustrated by an example. Suppose on a particular bill, the voting in the House of the People is 270 for and 230 against. If in the Council of States, the voting is 150 against and 100 for, in the joint meeting the bill is bound to be rejected, if we presume that the members will not change sides in either House in the joint meeting. If at some future date, multiple party system develops in the country, different parties or different combinations may predominate in the two Houses. It is felt that if, at some future date, the Council is able to obstruct the legislative programme of the House, that would be unfair to the Cabinet as well as to the House and will raise constitutional difficulties. But most of this talk is theoretical, in view of the present strength of the Parties in the two Houses. In the matters of the election and impeachment of the President, amendment of the Constitution, approval of the Declaration of an Emergency and removal of Supreme Court and High Court Judges, the Council of States has been given an equal status with that of the House of the People.

As a matter of principle, the Second Chamber should exercise influence and not power. It may revise and delay the legislative programme of the popular House, but should not be able to thwart it. The utility of a Second Chamber should be judged on the basis of the influence it wields over the popular House, which depends upon its personnel and working. In this respect, the Council of States leaves nothing to be desired. It is presided over by an intellectual, Dr. Radhakrishnan. It has a good set of debators, including some veteran public men like Dr. Kunzru, Mr. Ramaswami Mudaliar and Dewan Chaman Lal. The standard of debates in the Council is generally high. It has not so far aspired to obstruct any legislation initiated by the House. These are fortunate signs and augur well for the future of the Council.

POWERS OF THE PARLIAMENT

In a democracy, the government of a country is carried on in accordance with the wishes of her people. This objective is achieved by making the Parliament, which contains the representatives of the people, the nerve centre of the Government. The powers of the Parliament can be studied under four categories :—

Legislative Powers : The Parliament can make laws on all subjects enumerated in the Union as well as in the Concurrent List. Its law shall prevail, if it conflicts with a similar law passed by a State on the Concurrent List. The State List is, ordinarily, beyond its field of the legislation. This is, however, not so in an Emergency, when the Parliament gets the right to legislate on the entire State List. Even in ordinary times, there are three special circumstances, when the Parliament acquires the right to legislate on the State List i. e., (a) when the Council of States has declared, by a resolution supported by not less than two-thirds of its members present and voting that it is necessary or *expedient in the national interests* that the Parliament should make laws with respect to any matter enumerated in the State List ; (b) when it appears to the Legislatures of two or more States to be desirable that some subject in the State List should be regulated for them by the Parliament, and resolutions to that effect have been passed by both the Houses of Legislatures of those States ; and (c) when it is necessary for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association, or such other body.

Financial Powers : After the budget is prepared by the Cabinet, it is submitted for the approval of the Parliament. It is for the Parliament to decide, finally, what expenditure is necessary to be incurred ; and what taxes are to be approved for meeting that expenditure. No doubt, the proposals regarding all money bills come from the Cabinet, but Parliament is the ultimate sanctioning authority. To control the purse of the nation is one of the very legitimate functions of the Parliament.

Executive Powers : The Parliament keeps a day-to-day watch over the activities of the Executive and can control it. This is done through the right of members of the Parliament to ask questions and supplementary questions from the Ministers. Any arbitrariness or mishandling on the part of the Government can, thereby, be exposed, and brought before the bar of public opinion. The members can also move and pass resolutions in the Chambers, wherein the Government can be asked to do or not to do a particular thing. Matters of urgent public importance can be brought by the members, along with their recommendations in such matters, to the notice of the Government, even by suspending the work already in hand in the Parliament, by means of an adjournment motion. In extreme cases, the House of the People can get rid of

an undesirable Cabinet by passing a straight vote of no-confidence against it.

Miscellaneous Powers : The Constitution has placed some miscellaneous powers in the hands of the Parliament. Firstly, all initiative for amending the Constitution lies with the Parliament. There are some provisions of the Constitution, which the Parliament can amend by itself, even by ordinary majorities in both Houses. There are others, of a greater importance, which the Parliament can change by itself by two-third majorities. Secondly, the impeachment of the President is entirely in the hands of the Parliament. Thirdly, half of the total votes, which are cast at the election of the President belong to the Parliament. The judges of the Supreme Court and the High Courts cannot be removed, unless and until resolutions to that effect have been passed by both the Houses of the Parliament. And lastly, the powers of the President during an emergency are subject to the control of the Parliament.

According to Prof. H. J. Laski, the legitimate functions of a popular House like the House of the People are : (a) to make laws for the country ; (b) to make the government and to keep it in power by providing the support of a party with a majority in the House ; (c) the control of finances ; (d) to serve as a forum of deliberations where ideas and opinions are discussed, assessed and hammered into the shape of decisions ; (e) to control the administration by bringing to light the mistakes of the administration by means of questions, resolutions, adjournment motions, etc. ; (f) to act as a ventilating Chamber, by bringing to the notice of the Government the grievances of the public against it ; and (g) to act as a nursery and training centre for the national leaders, and also a place, where the better ones can be selected for greater responsibilities. All these functions are, undeniably, performed by the House.

Limitations on the Powers of the Parliament : The Parliament of India is not a sovereign body like that of England. It is not the final authority in all constitutional matters. There are certain provisions of the Constitution, which cannot be amended by the Parliament and require ratification by, at least, half of the States. Moreover, the laws passed by the Parliament are subject to a judicial review. The Supreme Court of India can declare any of the laws passed by it as *ultra vires* or unconstitutional, if it conflicts with the provisions of the Constitution. All laws passed by the Parliament require the approval of the President, who can return non-money bills to the Parliament for reconsideration. During an emergency, the Parliament can be ignored for two months, and if the Council is won over by the President, the House can be ignored for about nine months. All initiative in financial matters belongs to the Cabinet. The Parliament can discuss, but cannot vote on items contained in the Consolidated Fund of India. In a federal form of polity like ours, full and final sovereignty is nowhere given to the Central Legislature, which is also the case in India.

CHAPTER XXXVI

SUPREME COURT OF INDIA

The Federal Court plays a special role in a federation, which is in the nature of an agreement between its component States. Such a Court is necessary to preserve the division of functions between the Central Government and the States. The Court declares infringement by either in the sphere of the other *ultra vires* or unconstitutional. A federation demands a written constitution, which often requires authoritative interpretation. The Federal Court is made the final authority for interpreting the constitution. It is also made the protector of the fundamental rights granted by the constitution to the citizens. In short, the special role of a Federal Court in a federation is to act as the guardian and final interpreter of the constitution and to protect the rights of the people under the constitution. U.S.A. was the first country to perfect the model of such a Court. Most of the Federal Courts of the world, including the Supreme Court of India, are shaped on the lines of the Supreme Court of U. S. A.

Constitution of the Supreme Court : The Supreme Court is to consist of a Chief Justice of India and not more than ten Judges, which is the present strength of the Supreme Court. The Parliament can prescribe a larger number of Judges. The Supreme Court is located at Delhi. Any other place can be fixed for its sittings by the Chief Justice, with the approval of the President. All substantial questions of law regarding the interpretation of the Constitution are decided by at least five Judges, where a majority decision prevails. A separate judgment can be delivered by a dissenting Judge. The trial is heard, usually, in an open court. Other than constitutional matters can be decided by less than five Judges.

Appointment and tenure : The Judges of the Supreme Court are appointed by the President after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary. But in the case of the appointment of a Judge, other than the Chief Justice, the Chief Justice of India is always consulted. When the office of the Chief Justice of India becomes temporarily vacant, the duties of his office are performed by one of the other Judges of the Supreme Court, whom the President may appoint for the purpose. Temporary or *ad hoc* judges from High Court Judges may be appointed for such period, as may be necessary,

by the Chief Justice of India with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, if at any time there is no quorum of the Judges of the Supreme Court available to hold or continue any session of the Court. The Chief Justice of India, with the previous consent of the President, may request any retired Judge of the Supreme Court to act as a Judge, provided he consents to do so. The retiring age of a Supreme Court Judge is 65. After retirement no Judge of the Supreme Court can act or plead in any court or before any authority within the territory of India.

Qualifications and Salaries : No person can be appointed a Judge of the Supreme Court, unless he is a citizen of India and : (a) has been for at least 5 years a Judge of a High Court ; or (b) has been for at least 10 years an Advocate of a High Court ; or (c) is, in the opinion of the President, a distinguished jurist.

The Chief Justice of India draws a salary of Rs. 5000/- per month and other Judges Rs. 4000/- per month, apart from other allowances and an official residence free of rent. The salaries and allowances of the Judges cannot be reduced during their tenure of service and are charged upon the Consolidated Fund of India and are, therefore, not voted upon in the Parliament.

Removal of the Judges : A Judge of the Supreme Court can be removed from his office by an order of the President, which can be passed only after an address by each House of the Parliament, supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting, has been presented to the President, in the same session, for such a removal. Such an address can be presented only on the ground of proved misbehaviour or incapacity. It is for the Parliament to regulate the procedure for the presentation of addresses by the Houses and for the investigation and proof of the misbehaviour or incapacity of a Judge.

Powers and Functions : I. Original jurisdiction :—The original jurisdiction of a court covers those cases which come to it for a decision directly or in the first instance. The Supreme Court possesses original jurisdiction in all disputes : (a) between the Government of India and one or more States ; (b) between the Government of India and any State or States on one side and one or more States on the other side, provided the dispute involves any question of law or fact on which the existence or extent of a legal right depends. It is by the exercise of this jurisdiction that the Supreme Court is able to act as a balance-wheel between the various Units of the country and the Union. It can declare an infringement by the Centre in the spheres of the States and *vice versa* unconstitutional and can thus compel the Union as well as the States to confine their laws to their own restricted spheres.

II. Appellate jurisdiction : An appellate jurisdiction covers cases which come to a court for decision only in appeal. The Supreme Court is the highest court of appeal in India. In September 1949, the Constituent Assembly passed an Act, abolishing the right of appeal to the Privy Council. Before that, appeals were heard by the Privy Council from the decisions of the High Courts in civil and criminal cases and from the Federal Court of India in constitutional matters. The appellate jurisdiction of the Supreme Court is of three kinds :—

(a) **In Constitutional cases :** An appeal lies to the Supreme Court from any judgment, decree, or final order of a High Court, in all civil, criminal, or other proceedings, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution (which includes the Act of 1935, its amendments and the Independence Act, 1947). When the High Court refuses to grant such a certificate, the Supreme Court can itself grant a special leave to appeal, if it is satisfied that the case really involves a substantial question of law as to the interpretation of the Constitution.

The Supreme Court has got the power to issue directions or orders or *writs* in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of the fundamental rights of the citizens. Similar powers have been given to the High Courts of the States. This is the famous power through which the Supreme Court protects the fundamental rights of the citizens guaranteed by the Constitution. This also makes the Court the final interpreter of the Constitution. Once the Court has given a certain interpretation to some provision of the Constitution, its opinion will be honoured by all Courts in India, till the Constitution itself is amended. Once it has declared a law *ultra vires* of the Constitution, nothing can make it constitutional, except a clear verdict to the contrary, by the authority competent to amend the Constitution.

(b) **In Civil cases :** An appeal lies to the Supreme Court from any judgment, decree, or final order of a High Court in a civil case, if the High Court certifies that the dispute involves an amount or property worth not less than twenty thousand rupees or such other sum, as may be fixed in this matter by the Parliament. An appeal will also lie, if the High Court certifies that the case is a fit one for an appeal to the Supreme Court. In case such a judgment, decree or final order, which is appealed against, affirms the decision of the court immediately below, the appeal can be heard by the Supreme Court only, if the High Court further certifies that the appeal involves some substantial question of law.

(c) **In Criminal cases :** An appeal lies to the Supreme Court from any judgment, final order or sentence of a High Court in a

criminal case, if the High Court : (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death ; or (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such a trial convicted the accused person and sentenced him to death ; or (c) certifies that the case is a fit one for appeal to the Supreme Court.

The Supreme Court, as the highest Court of India, possesses a special discretionary right of granting special leave to appeal from any judgment, decree, sentence or order in any case, i.e., constitutional or civil or criminal, made by any court or tribunal in India ; except when such a judgment is made by a court or tribunal under the law relating to the Armed Forces. Such a right of appeal is, however, granted very sparingly. The Supreme Court observed in *Pritam Singh versus the State* (1950), "This Court will not grant special leave to appeal, unless it is shown that exceptional and special circumstances exist and that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against."

III. Advisory jurisdiction : The President can refer to the Supreme Court any question of *law or fact* of public importance for its opinion, and the Court is bound to give such an opinion. For this purpose, the Court can grant such hearing to persons or authorities concerned, as the Court thinks fit. The President can ask such an opinion even with regard to an agreement signed between the Government and a State regarding accession, etc., before the commencement of the Constitution, although such cases are beyond the competence of the Supreme Court to hear. The Supreme Court arranges open hearings to enable itself to give advisory opinions to the President.

There is no such provision in the Constitution of U.S.A. The Supreme Court of America even refused to give such an opinion to President Washington, unless the matter came before the Court in the form of a concrete case. Such a jurisdiction is, however, conferred by the Constitutions of many States in U.S.A. on their Supreme Courts. The Government of India Act, 1935, had placed a similar duty on the Federal Court, but only on questions of law. Opinions differ regarding the advisability of conferring such a jurisdiction on the Supreme Court of a State. The Privy Council has given its opinion against conferring such a jurisdiction in the *Attorney-General for Ontario versus the Attorney-General of Canada*. In the opinion of their Lordships, it is inadvisable for courts to give their opinion on law-points, unless and until these points come before the courts in the form of concrete cases between litigants, otherwise the interests of future litigants may be prejudiced. Those who are in favour of this provision believe that such an opinion may, sometimes, be able to avoid a good deal of unnecessary

and ruinous future litigation. Many a time it so happens that after years of the enactment of a particular law, it is declared *ultra vires* by the Supreme Court. Those people, who had already acted upon it in the meanwhile, are placed in a very awkward position and they are called upon, all of a sudden, to 'unscramble the omelette.' The framers of the Constitution, after giving their best consideration to the pros and cons of the question, felt that it was, on the whole, better to lay this duty on the Court under the circumstances.

IV. Miscellaneous Powers : The Supreme Court acts as a court of record and has all the powers of such a court, including the power to punish for contempt of itself. It has also the power to review its own judgments and orders, subject to any law made by the Parliament and any Rules framed by the Court itself. The Supreme Court may pass such order, as is necessary, for doing complete justice in any case pending before it, and any order so made shall be enforceable throughout the territory of India, as prescribed by the Parliament. The Court has also the power to secure the attendance of any person, the discovery of any documents or the investigation or punishment of any contempt of itself. Subject to any law made by the Parliament, the Supreme Court may, from time to time and with the approval of the President, make Rules for regulating, generally, the practice and procedure of the Court. The appointment of officers and servants of the Supreme Court is made by the Chief Justice of India, or some other Judge or officer of the Court, as he may direct, provided the President may, by rules, require some particular appointments to be made, after consultation with the Union Public Service Commission. The Rules regarding salaries, allowances, leave or pensions of the ex-officers and servants, are also to be framed by the Chief Justice of India, or any other Judge or officer of the Court, subject to any law made by the Parliament and approval of the President. These salaries and allowances, and other expenses on the establishment of the Supreme Court are charged upon the Consolidated Fund of India.

Enlargement of jurisdiction : Under Articles 138 and 139, the powers of the Supreme Court may be extended by the Parliament with respect to : (a) any of the matters enumerated in the Union List ; (b) its appellate jurisdiction in criminal cases from the decisions of the High Courts ; (c) any matter as the Government of India and the Government of any State may, by special agreement, confer on the Court ; (d) the issue of directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* or any of them, for purposes other than the enforcement of the fundamental rights ; and (e) any other power considered necessary or desirable for the purpose of enabling the court to exercise more effectively the jurisdiction conferred upon it by the Constitution.

Limitations on the powers of the Supreme Court : Some matters have clearly been placed beyond the jurisdiction of the Supreme Court. Firstly, a law laying down a procedure for arrest and detention of individuals and even for depriving them of their lives cannot be challenged by the Court on the grounds of unreasonableness or harshness, if it is enacted in accordance with the procedure established by law. Secondly, the amount of compensation granted by the State to those, whose property has been acquired for a public purpose, cannot be declared too meagre, insufficient or unreasonably small. No such law can be declared *ultra vires* only on this score. Thirdly, the Court cannot interfere in the application of a law relating to delimitation of constituencies. Fourthly, the President is the sole judge to decide the time and circumstances for the Declaration of an Emergency. And lastly, the Speaker of the House of the People is the final judge to decide whether a bill is a money bill or not. These are some of the matters, which are not open to judicial review in India. The supremacy of the Parliament has been kept intact in these matters.

Apart from these limitations, the Supreme Court has been endowed with quite an imposing set of powers. As its name implies, its authority is supreme in all judicial matters. The law declared by the Supreme Court is binding on all Courts within the territory of India. The Constitution has placed a duty on all civil and judicial authorities in India to act in aid of the Supreme Court. Mr. M. C. Sitalvad, the Attorney-General of India rightly remarked at the time of the inauguration of the Supreme Court, in January, 1950 : "The writ of this Court will run over territory extending to over two million square miles, inhabited by a population of about 330 millions. It can truly be said that the jurisdiction and powers of this Court in their nature and extent are wider than those exercised by the highest court of any country in the Commonwealth or by the Supreme Court of U. S. A." Mr. Alladi Krishnaswami Ayyar also said, "The Supreme Court in the Indian Union has more powers than any Supreme Court in any part of the world". The Supreme Court stands at the apex of a "single, centralised and fully integrated" judicial system set up by the Constitution in India.

Providing flexibility to the Constitution : While interpreting the Constitution, the Supreme Court of America has also developed the Constitution and has imparted flexibility to it. The Court has been able to achieve this result, by looking at the Constitution as an organic or a dynamic institution or instrument. It has strengthened the Federal Government at the cost of the States, even by straining the wordings of the Constitution because the same was clearly necessary and expedient in view of the changed times and circumstances. It is generally felt that the Supreme Court should not take a too rigid, formal or legalistic view of the provisions of the Constitution. A Constitution

is after all an instrument for achieving the welfare of a society. Nothing in the Constitution should be allowed to defeat that purpose. This does not mean, however, that the Supreme Court can go against or ignore clear wordings of the Constitution. All that it means is that the Court should, as far as possible, try to interpret the Constitution in such a manner that it is best able to serve the needs of the society, especially when such an interpretation is not against the wordings of the Constitution. The true role of a Federal Court, as an instrument for providing flexibility to the Constitution, was once described in memorable words by Sir Gwyer, to which reference has already been made.¹ Sitalvad said, "The detailed enumeration of fundamental rights in the Constitution and the provisions which enable them to be reasonably restricted will need wise and discriminating decisions. On the Court will fall the difficult task of ensuring the citizen the enjoyment of his guaranteed rights, consistently with the rights of the society and the safety of the State". Thus while interpreting the Constitution, the Court will have to perform the difficult task of reconciling liberty with authority, rights with duties and the needs of the individual with the needs of the State and the society.

Independence of the Judges : The Constitution contains many provisions, whose object is to make Judges free from undue influence of the Executive and the Legislature and to make them independent of the favours and frowns of these authorities. Firstly the Judges are under an oath "to administer justice without fear or favour, affection or ill-will and to uphold the Constitution and the law". Secondly, the salaries and allowances of a Judge cannot be reduced during his tenure of service. This provides the Judges a security with regard to their emoluments. Thirdly, they have been appointed during good behaviour. No Judge can be removed except on the ground of a proved misbehaviour or incapacity. The method of their removal has been made as difficult as possible. This provides a security of tenure. Fourthly, the Judges are forbidden to practise as lawyers after their retirement. This was done to free them from the temptation of obliging big parties to ensure future clientele. And fifthly, their salaries and allowances are made a charge on the Consolidated Fund of India, which means that they are not votable in the Parliament. Justice is not worth anything, if the Judge is not absolutely free and impartial. The Constitution has done all that it could to achieve that objective.

Working : During the short span of its working, the Court has amply justified its existence. It has fulfilled the expectations made of it and has won the confidence of the Government as well as the public. It has protected the fundamental liberties granted to citizens in several well-known cases without forgetting the needs

1. See p. 197.

of the State and the society. It has maintained the Newtonian equipoise set up by the Constitution between the Centre and the States, by declaring infringements into the spheres of each other unconstitutional. It has permitted full growth of conventions, which were implied in the Constitution. Its decisions, on the whole, have been consistently progressive and display a breadth of vision. It has, frankly, acknowledged the limitations placed by the Constitution on its powers.

CHAPTER XXXVII

MACHINERY OF GOVERNMENT IN STATES

THE GOVERNOR

The form of executive in States is also parliamentary like the Union executive. The Governor is the formal executive in States. His position is analogous to that of the President.

Appointment of the Governor : There was some difference of opinion amongst the framers of the Constitution regarding the method of appointing the Governor. The Drafting Committee proposed to have elected Governors. But this proposal was rejected by the Constituent Assembly. Most of its members were of the opinion that, if in a State both the Governor and the Ministers were elected by the people, there was a danger of a constitutional deadlock because the Governor would rely on his popular election in taking up a particular stand. Moreover, if he was elected by the people of the State, he could not be treated as an agent of the Union Government.

The Governor is appointed by the President and holds office during his pleasure, which means that the Governor can, at any time, be removed by the President. Ordinarily, he holds office for five years from the date on which he enters upon his office. Even after the expiration of this period, he is required to continue in office, until his successor, takes up the charge. No person is eligible for appointment as Governor, unless he is a citizen of India and has completed the age of 35 years. The Governor cannot be a member of either House of the Parliament or of the Legislature of any State. He cannot hold any other office of profit under the Government. The Governor gets Rs. 5,500 per month as salary, besides a rent-free official residence and other allowances. The Parliament has the authority to fix his salary and allowances from time to time. But the emoluments and allowances of a Governor cannot be diminished during his term of office.

POWERS OF THE GOVERNOR

The powers of the Governor may be discussed under five categories : (a) executive ; (b) legislative ; (c) financial ; (d) judicial ; and (e) discretionary.

(a) **Executive powers :** The executive power of the State is vested in the Governor and is exercised by him either directly or through officers subordinate to him in accordance with the

Constitution. This power of Governor extends to all the subjects enumerated in the State List. On the Concurrent List, his executive power can be limited by the executive power of the Parliament.

There is a Council of Ministers, with the Chief Minister at the head, to aid and advise the Governor in the exercise of his functions, *except in those matters where he is to act in his discretion*. The Chief Minister is appointed by the Governor and the other Ministers are appointed by the Governor on the advice of the Chief Minister. The Ministers hold office during the pleasure of the Governor. The Governor appoints a person, who is qualified for appointment as a Judge of the High Court to be the Advocate-General for the State to advise the Governor on legal matters. The Advocate-General holds office during the pleasure of the Governor and receives remunerations as the Governor may determine. The Governor also appoints the Chairman and the members of the State Public Service Commission and is consulted in the appointment of the Judges of the State High Court. He regulates postings and transfers of the members of the All-India Services working in the State. All executive orders of the Government of a state run in the name of the Governor. He makes rules for the more convenient transaction of the business of the Government of the State and for allotment among Ministers of the said business, except where he is to act in his discretion. Portfolios are allotted to the Ministers by the Governor on the advice of the Chief Minister.

It is the duty of the Chief Minister of the State to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation, and to furnish the Governor any information as the latter may call for in these matters. The Governor can ask the Chief Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister, but which has not been considered by the Council as a whole.

(b) Legislative powers : The Governor is an integral part of the Legislature of State. No bill can become a law, unless it receives his assent. He has the power to summon and prorogue both Houses and to dissolve the Legislative Assembly. But the Houses must be summoned so that six months must not intervene between their last sitting in one session and the first sitting in the next session. The Governor may address a House or the Houses assembled together and can require the attendance of the members for this purpose. He can send messages to the House or Houses with regard to any bill, which must be considered by the Legislature with all convenient despatch. The Governor must address the Legislative Assembly or both Houses assembled together where there is a Legislative Council, at the commencement of the first session after each general election to the Legislative Assembly

and at the commencement of the first session each year and inform the Legislature of the causes of its summons. Every bill, after it has been passed by the State Legislature, is required to be sent to the Governor, who may either assent to it or withhold such an assent or reserve it for the consideration of the President. The Governor must so reserve any bill, which so derogates the powers of the High Court as to endanger the position which that Court is meant to fill. He can return a bill, other than a money-bill, for reconsideration ; but if it is passed again by the Legislature, he must accord assent to it.

The Governor can promulgate an Ordinance during the recess of the Legislature. Such an Ordinance must be laid before the State Legislature, and shall cease to operate at the expiry of six weeks from the reassembly of the Legislature, unless it is withdrawn by the Governor or is disapproved by the Legislature earlier. No such Ordinance can be promulgated by the Governor, without the approval of the President, if : (a) a bill containing the same provisions would have required the previous sanction of the President ; or (b) he would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President ; or (c) an Act of the Legislature of the State containing such provisions would have been invalid, unless reserved for the consideration of the President. Any provision in such an Ordinance, which would not be valid if enacted in an Act of the Legislature of the State, shall be void.

(c) **Financial powers :** No money bill can be introduced in the Legislature of the State without the previous permission of the Governor. He orders the budget to be laid before the Legislature every year. No demand for grant can be made, except on his recommendation. The Governor is also authorized to ask for supplementary, additional or excess grants from the Legislature of the State.

(d) **Judicial prerogatives :** The Governor has got the power to grant pardons, reprieves, respites or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter, to which the executive power of the State extends. No criminal proceedings can be started against him. Two months' written notice is required for bringing any civil suit against him.

(e) **Discretionary powers :** Article 163 (1) provides that there shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions, *except in so far as he is required by the Constitution to exercise his functions in his discretion*. Thus there are clearly some functions, in the performance of which the Governor may ignore the advice tendered by the Ministry. The Constitution does not enumerate the discretionary powers of the Governor. It is left to the Governor to decide, when to act in his discretion and

when not. The validity of anything done by the Governor in his discretion cannot be called in question in any court of law on the ground that the Governor ought or ought not to have acted in his discretion.

The Constitution makes a specific mention of the discretionary powers of the Governor in two cases. Article 9 (2) of the Sixth Schedule provides that any dispute as to the share of mining royalties between the Government of Assam and a District Council shall be determined by the Governor of Assam in his discretion. Under Article 18 (3) of the same Schedule, the Governor of Assam shall carry on the administration of the tribal areas described therein as the agent of the President and acting in his discretion. Apart from these instances, there are clearly some other functions in which the Governor may exercise his discretion, e.g. : (a) at the time of the appointment of the Chief Minister ; (b) while reporting a breakdown of the constitutional machinery in the State to the President ; (c) at the time of dissolving the Legislative Assembly ; and (d) during the time of the Declaration of an Emergency, within the role allotted to him by the President.

We all know that the Governors were granted discretionary powers under the Act of 1935. While acting in that capacity, the Governor under the Act was free to consult the Ministers or not. Even when he decided to avail of the advice of the Ministers, he was quite free to follow their advice or not. Similarly under the present Constitution, there are some functions, in the performance of which, the Governor is free to consult the Ministers or not, and even when he does so, he may not act according to their wishes.

Under the Act of 1935, the grant of discretionary powers to the Governors showed distrust of the popular Ministers on the part of the British Government. These were in the nature of safeguards to keep a control of the British Government over the progressive forces. Under the present Constitution, the grant of discretionary powers to the Governors again shows that there was some distrust in the minds of the framers of the Constitution of the popular leaders in the States. Possibilities were visualised, when the Constitution may become unworkable in a State, or a State may show disruptive tendencies, or the State Ministry may not act in the best interests of the people of the State or that of the country as a whole, or favouritism, corruption, etc., may become rampant in a State. The Governor, at such a time, may be able to save a critical situation at the behest of the Centre.

When faced with an extraordinary situation, where the Governor has to act in his discretion, he has to perform a very difficult role. No advisors have been provided to help him in the performance of the discretionary functions. The Governor, in so acting, must show wisdom and tact. He should intervene only in

exceptional cases, when the normal functioning of the constitutional machinery is not possible and the interests of the people of the State or of the country as a whole are at stake. Any Governor may suddenly be faced with such a situation. It is, therefore, necessary that only the best type of individuals, of proved administrative ability should be appointed as the Governors of the States.

The grant of such powers to the Governors under the Government of India Act, 1935, was naturally condemned by progressive Indians. Under the present Constitution, their only justification is that these powers would be used according to the wishes of the popular Cabinet at the Centre. The appointment and removal of the Governor is in the hands of the President, which in reality means the Union Cabinet, to which the Governor is indirectly responsible. There is no danger that such powers may be abused by the Governor because, while so acting, he is certainly responsible to the Cabinet. The threat of removal and even dismissal by the Centre is a sufficient safeguard for that purpose.

Role of the Governor : It is quite evident that, ordinarily, the Governor has to act according to the wishes of the Council of Ministers in the State. His normal role is that of a constitutional head. Most of the powers enumerated above are, in reality, the powers of the Council of Ministers. No other active role can fit well in a parliamentary set-up as we find in States. It is only in the exercise of discretionary powers, which are quite few, in fact very few, when he may ignore the wishes of the Ministers. Apart from the role of the Governor as the constitutional head of the State, the Constitution certainly visualises another role on his part when he acts as the agent of the Centre. It is only while so doing that the use of discretionary powers becomes relevant. It may be added that there are no such discretionary powers with the President, who is bound to consult the Union Ministers in the performance of all public functions. Responsible government may be suspended in a State, but no such eventuality is possible in the Centre. Whatever the time and type of Emergency, responsible government must go on in the Centre.

COUNCIL OF MINISTERS

The Council of Ministers is the real executive in a State. Its position corresponds to that of the Union Cabinet. The Council is the real wielder of most of the powers, which we have described as belonging to the Governor.

In every State, there is a Council of Ministers, with the Chief Minister at the head, to aid and advise the Governor in the exercise of his functions, except in those matters where the Governor is to act in his discretion. The Chief Minister is appointed by the Governor and other Ministers are appointed by

the Governor on the advice of the Chief Minister. This power of appointing the Chief Minister is a mere formality. The Governor is bound to name the leader of the majority party in the Legislative Assembly of the State as the Chief Minister. Other Ministers are really named or chosen by the Chief Minister. It is not possible for the Governor to appoint a Minister against the wishes of the Chief Minister. The Council holds office during the pleasure of the Governor. This again is a formal provision. Ministers really hold office, so long as they enjoy the confidence of the majority party in the Legislative Assembly. In exceptional cases, however, the Governor may dismiss a Minister because of dishonesty, corruption, etc. In the States of Bihar, Madhya Pradesh and Orissa, there must be a Minister in charge of tribal welfare, who may, in addition, be in charge of the welfare of the Scheduled Castes and Backward Classes or any other work. The Council of Ministers is collectively responsible to the Legislative Assembly of the State. No person, unless he is a member of the State Legislature, can ordinarily be appointed as a Minister and if so appointed, must become a member within six months of his appointment, otherwise he will have to vacate his office as a Minister. The salaries and allowances of Ministers are fixed by the State Legislature from time to time. Portfolios are allotted to the Ministers by the Governor on the advice of the Chief Minister.

It is the duty of the Chief Minister to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation. He must furnish to the Governor such information relating to these matters, as the Governor may call for. If the Governor so requires, the Chief Minister must submit for the consideration of the Council of Ministers any matter, on which a decision has been taken by a Minister, but which has not been considered by the Council as a whole.

From all these provisions stated above, it is quite clear that these are identical to those relating to the Union Ministers, with which we have already dealt at length. Their method of appointment is the same. Both are the real executives. Both are under a similar Chief. The powers of the State Ministry with regard to the affairs of the State are the same as those of the Union Cabinet with regard to the whole of India. The practical working of the State Ministry is governed by the same parliamentary conventions, as we have mentioned in the case of the Union Cabinet. Both have a party complexion and both derive their powers from a majority party or parties in the popular House. The position of a State Minister *vis-a-vis* the Governor, the Chief Minister, the other Ministers in the State and the Legislative Assembly is the same as that of a Union Minister with regard to the President, the Prime Minister, the other Union Ministers and the House of the People respectively.

The general policy regarding the State is laid down by the State Ministry including the legislative programme to implement that policy. The finances of the State are controlled by it. The Ministry decides, what is to be spent on the administration of the State, how it is to be spent, and what taxes are to be levied to raise that amount. Every Minister is, ordinarily, incharge of one or more Departments of the State Government, whereby the entire administrative machinery of the State is controlled by the Ministry.

Position of State Ministry : Normally speaking, the Governor is the constitutional head of the State and the Ministry is the real executive. The Governor must, ordinarily, act according to the advice of the Ministers. But there are some matters where, the Governor may act in his discretion. While so acting, the Governor may or may not consult the Ministers. Even when he consults the Ministers, he is not bound to follow their advice. Thus, except in the small range of discretionary powers, the relation between a State Ministry and the Governor, is that of a real and a constitutional head of a State in a parliamentary form of government.

The Chief Minister of the State is central to the formation, working and end of the Cabinet. He is much more than the first among equals. Yet he is a leader, not a boss. The success of a Chief Minister depends upon his ability to persuade other Ministers to agree to his view-point and not on his power to coerce them into submission.

The State Ministers are collectively responsible to the Legislative Assembly of the State. The members of the Legislature can exercise control over them by asking questions and supplementary questions. Resolutions and adjournment motions can also be moved and passed to influence the State Ministry. In extreme cases, the Legislative Assembly can remove the Ministry by rejecting some important bill sponsored by the Government, or by enacting a bill which the Government does not want, or by passing a straight vote of no-confidence against the Ministry. In such a case, the Ministry can also request the Governor to dissolve the Legislative Assembly. The Governor cannot, ordinarily, refuse such a request. The power of dissolution over the Assembly is a great threat for the rank and file of the members of the Assembly because of the botheration and expenses involved in the election, which for some might mean losing their seats. The right of advising dissolution deters the members of the Assembly from flirting with the life of the Ministry. The reciprocal powers of removal and dissolution breed mutual respect for the points of view of each other. Moreover, the members of the Ministry are, usually, the leaders of the majority party in the Assembly. If the party members go against the Ministry, it may be regarded as an act

of indiscipline on their part, making them liable for expulsion from the party or some other disciplinary action.

LEGISLATURE OF PART A STATES

The Legislature of every State consists of the Governor and the Legislative Assembly. But in the States of Andhra Pradesh, Bihar, Bombay, Madhya Pradesh, Madras, Mysore, Punjab, Uttar Pradesh and the West Bengal, there is also the Legislative Council.

The Governor has the power to summon the House or each House of the Legislature of the State from time to time. But six months must not intervene between the last sitting of a House in one session and the date appointed for its first sitting in the next session. The Governor may also prorogue the House or either House from time to time. Only the Legislative Assembly can be dissolved by him. The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members. The Governor may also send messages to the House or Houses, with respect to a pending bill or otherwise, which must be considered with all convenient despatch. The Governor must address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons, as required under Art. 176.

LEGISLATIVE COUNCIL

The total number of members in the Legislative Council of a State can exceed one-fourth of the total number of members of its Assembly, but it should not be less than 40 in any case. Until the Parliament prescribes otherwise, the membership of the Council is to consist of the following categories : (a) about one-third to be elected by municipalities, district boards and similar local bodies in the State ; (b) about one-twelfth to be elected by university graduates of at least three years' standing ; (c) about one-twelfth to be elected by teachers in the State of a standard not lower than that of a secondary school ; (d) about one-third to be elected by the members of the Legislative Assembly of the State from persons, who are not members of the Assembly ; and (e) the remainder to be nominated by the Governor from persons having special knowledge of or practical experience in literature, science, art, co-operative movement and social service. The election of the various categories of the members of the Council is to be held in accordance with the system of proportional representation by means of the single transferable vote. To be a member of the Council, a person must be a citizen of India, not less than 30 years of age, and should possess such other qualifications as may be prescribed by the Parliament.

The States Reorganisation Act, 1956 as amended by the Legislative Councils Act, 1957 has fixed the composition of the various Councils as follows :—

Andhra Pradesh	...	...	90
Bihar	...	...	96
Bombay	...	...	108
Madhya Pradesh	...	...	90
Madras	...	...	63
Mysore	...	...	63
U. P.	...	...	108
Punjab	...	...	51
West Bengal	...	...	75

The Council is a semi-permanent body and is not subject to dissolution ; but as nearly as possible, one-third of its members retire every two years. Hence, the usual tenure of a member is six years. The Council elects two of its members as the Chairman and the Deputy Chairman. The Chairman or the Deputy Chairman can be removed from office by a resolution of the Council passed by a majority of all the members of the Council. No such resolution can be moved, unless at least fourteen days' notice has been given. The Chairman or the Deputy Chairman shall not preside, when a resolution for his removal is under consideration. He will have the right to speak and vote therein only in the first instance, but not in case of an equality of votes.

LEGISLATIVE ASSEMBLY

A person is not qualified to fill a seat in the Assembly, unless he is a citizen of India ; is not less than 25 years of age and possesses such other qualifications as may be prescribed by the Parliament. The Assembly is directly elected on the basis of universal adult franchise like the House of the People. Communal or separate electorates have been abolished. Seats are, however, reserved for the Scheduled Castes and the Scheduled Tribes in every State, except for the Scheduled Tribes in the tribal areas of Assam. The Governor, if he is of the opinion that the Anglo-Indian community is not adequately represented in the Assembly, may nominate such number of members of that community to the Assembly, as he considers appropriate.

The members of the Legislative Assembly vary between 500 and 60. Ordinarily there cannot be more than one member for every 75,000 of the population. Each State is divided into territorial constituencies, which are allotted seats in proportion to their population. The ratio between the number of members allowed to each territorial constituency in a State and the population of that constituency is kept, as far as practicable, the same throughout the State. Seats for the several territorial constituencies for

the Assembly in every State are readjusted after the completion of each census, but these adjustments do not take effect, until the dissolution of the existing Assembly.

After the reorganisation of States in 1956 the strength of the Legislative Assemblies has been fixed as follows :—

Andhra Pradesh	...	...	...	311
Assam	...	...	...	108
Bihar	...	...	...	308
Bombay	...	...	...	396
Kerala	...	...	...	126
Madhya Pradesh	...	...	...	288
Madras	...	...	...	205
Mysore	...	...	...	208
Orissa	...	...	...	140
Punjab	...	...	...	154
Rajasthan	...	...	...	176
Uttar Pradesh	...	...	...	430
West Bengal	...	...	...	252

The ordinary duration of the Legislative Assembly is five years, unless it is dissolved earlier by the Governor. Its life can be extended during an Emergency by the Parliament by a year at a time. Such period cannot be extended beyond six months, after the Proclamation of Emergency has ceased to operate. The Assembly elects two of its members as the Speaker and the Deputy Speaker. The Speaker or the Deputy Speaker may be removed from office by a resolution of the Assembly passed by a majority of the total members of the Assembly. No such resolution can be moved, unless at least 14 days' notice has been given. The Speaker or the Deputy Speaker cannot preside, when a resolution for his removal is being proceeded with. He will have the right to speak and vote therein only in the first instance, but not in case of an equality of votes. The Speaker and the Deputy Speaker draw salaries and allowances, as are fixed by the Legislature of the State.

COMPARATIVE POWERS OF THE TWO HOUSES

As the Assembly is directly elected by all the voters in a State, it is the real representative House of the people of the State. The Council, on the other hand, represents interests and classes. In a democratic set-up, the powers of the Assembly are bound to be greater.

Regarding money bills : Money bills can originate only in the Assembly. Hence, no initiative can be taken by the Council in money matters. It is for the Speaker of the Assembly to decide, whether a bill is a money bill or not, and his decision is final. A money bill is sent to the Council, only after it has been passed by the Assembly. If the Council returns the bill within 14 days with

amendments, it is entirely for the Assembly to accept those amendments or not. If the bill is not returned within fourteen days it is taken to have been passed by both Houses, after the expiration of this period. The demands for grants are voted only in the Assembly. Thus we find that the worst Council can do is to delay a money bill for fourteen days. This is just like the power of the Council of States on money bills. This power amounts to a suspensory veto for a fortnight *and no more*.

Regarding non-money bills : Non-Money bills can originate in both Houses. When such a bill is passed by the Legislative Assembly and is rejected by the Council, or passed by it with amendments which are not acceptable to the Assembly, or more than three months pass since its transmission to the Council, the Legislative Assembly may pass the bill the second time and send it to the Council. If even then, it is rejected by the Council, or amended by it in a manner to which the Assembly does not agree or more than a month is over, since the time the bill was sent to the Council the second time, it will be deemed to have been passed by both Houses, in the form in which the bill has been passed by the Assembly the second time. The upshot of this procedure on non-money bills is that the worst the Council can do to such a bill is, to delay it for four months. Thus on non-money bills, the Council possesses a suspensory veto for four months ; which means that its powers in this respect are less, even as compared with those of the Council of States, which can delay such a bill for six months. There is no provision for a joint meeting as is provided when there is a disagreement between the House of the People and the Council of States. Thus, there is not even a pretence of equality between the two Houses of the Legislature in a State. The upper House is distinctly secondary.

Regarding the Executive : The State Ministry is responsible to the Legislative Assembly alone. The Legislative Council can also influence the State Ministry by asking questions and supplementary questions and by moving resolutions and adjournment motions. But the Ministry is apt to pay much more heed to such moves when made by the Assembly because, as already stated, the Assembly has even got the power to remove the Ministry.

In short, the Council is very weak as compared with the Assembly. It can at the most delay a money bill for fourteen days and a non-money bill for 4 months. The Second Chamber, as introduced in the States, is one of the weakest Second Chambers in the world. It can only compel a second consideration of a bill by the popular House. It is not clear from the Constitution, what will be the position when a bill is originally passed by the Council and is rejected by the Assembly. But the intention of the Constitution appears to be that such a bill will simply die, unless there is a compromise between the Houses.

PROBLEM OF SECOND CHAMBERS IN STATES

There is a great controversy regarding the desirability or otherwise of the Second Chambers in the States. The question of introducing Second Chambers in the British Indian Provinces was examined by the Montford Committee, but their introduction in the Provinces was not recommended because, the Committee saw "very serious practical objections to the idea".¹ The Committee recorded, "It would be impossible to secure a sufficient number of suitable members for two Houses, and the delay involved in passing legislation through two Houses would make the system far too cumbrous to contemplate for the business of Provincial Legislation."² The Simon Commission came to no definite and joint decision on the point. The Lothian Committee also was undecided like the Simon Commission. While the Act of 1935 was on the anvil, there was a lot of agitation against the move for providing Second Chambers in some Provinces. Sir Tej Bahadur Sapru voiced the opinion of the progressive elements in India against the move in his memorandum which was submitted to the Joint Parliamentary Committee. In the White Paper, Second Chambers were proposed only for Bengal, United Provinces and Bihar. To these three Provinces, Bombay and Madras were added by the Joint Parliamentary Committee and Assam during the passage of the Bill in the Parliament. The move was opposed even in the Parliament by members like Lord Strabolgi. Prof. Keith regarded the introduction of Second Chambers in the Provinces under the Act of 1935, "as a concession to the conservative feeling in India and the United Kingdom". The usual arguments advanced in favour of the Second Chambers, the objections raised by the progressive elements in India against the Second Chambers as provided in the Provinces under the Act of 1935 and their working have been noted in an earlier Chapter.³

Provision of Second Chambers in some States : When the question for providing Second Chambers in States came for a discussion before the Provincial Constitution Committee of the Constituent Assembly, the members of the Committee could not arrive at any final decision. The matter was ultimately left to be decided by the representatives of each Province in the Constituent Assembly, meeting separately for the purpose. As a result of these discussions, the representatives of Bihar, Bombay, Madras, Punjab, the United Provinces and the West Bengal decided to have a Second Chamber ; whereas those of the remaining Provinces of Assam, Orissa, and Central Provinces thought it better to have only one Chamber. This explains why we have Second Chambers only in some States, and not in all. Mysore was also given a Second Chamber. The

-
1. Montford Report, p. 123.
 2. Montford Report, p. 123.
 3. See pp. 206-207.

Legislative Councils Act, 1957 created two more Legislative Councils : one each for Andhra and Madhya Pradesh. In view of the strong opposition of all the progressive parties, including the Congress, to the provision of Second Chambers in some of the Provinces under the Government of India Act, 1935, it is rather surprising to find such Houses in the present Constitution, which is made by Indians themselves.

The Constitution provides a very easy method for introducing and abolishing Second Chambers in the States. The Parliament can pass a law for that purpose by ordinary majorities, when a resolution to that effect has been passed by the Legislative Assembly of a State, by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly, present and voting. Hence under the Constitution, it is left to the Legislative Assembly of a State, whether to have a Second Chamber or not.

Those who are opposed to Second Chambers in States continue to argue about their uselessness. In their opinion, Second Chamber is a costly luxury in a State. Funds are needed in the States for nation-building department like education, medical relief, housing and to make the Five-Year Plan a success. They duplicate legislative work, which means wastage of time. The critics regard them so weak that they can hardly provide an effective check on Lower Houses. They are too costly a machinery for delaying or revising bills. The revision of a bill can be done much better by a small body of experts, legal as well as technical, with much less cost and with much greater speed. The Provincial Assembly can seldom go astray because it can be effectively controlled by the Union Cabinet. The Governor is there to checkmate undesirable tendencies. The right of the President to declare a state of Emergency when a constitutional breakdown is threatened in a State, and the various other powers in the hands of the Union Cabinet to control State legislation through the Governor are sufficient safeguards to ensure that the State Assembly would not go astray. The British Government provided Second Chambers in some of the Provinces to make room for their friends of aristocracy and to counteract the forces of nationalism in those Provinces. It appears that the Congress Ministeries in the States, where we have Second Chambers, want to retain them in order to have some additional baits and temptations in their hands. Earlier the Second Chambers in the States are abolished, the better.

Powers of the State Legislature : The State Legislature can make laws on all subjects enumerated in the State List. It can also make laws on the Concurrent List. But if such a law, contravenes another law passed by the Parliament on the same subject in the Concurrent List, the State law will be invalid to the extent it conflicts with the Union law. The State Legislature has

got full control over the State budget, subject to some limitations. Out of the total expenditure provided for in a budget, some items are charged on the Consolidated Fund of the State. These items cannot be voted upon in the Legislature, but they can only be discussed. All other items of expenditure are presented to the Legislature in the form of demands for grants. The Legislative Assembly is authorized to reject or reduce any of these grants. The Assembly cannot, however, increase a grant or alter its destination. No fresh grant can be moved in the Assembly without the permission of the Governor. The revenue or the income side of the budget is also under the control of the Assembly. The grants are not voted in the Legislative Council. The State Legislature can control the Executive of the State in various ways. Questions and supplementary questions can be asked of the Ministers on any aspect of the administration. Resolutions can be passed recommending some positive action to be taken by the Government. Adjournment motions can be moved to draw the attention of the Government to some matter of urgent public importance. All these powers are used by both the Houses. The Legislative Assembly alone is competent to remove the State Ministry.

Limitations on the Powers of the State Legislature : The powers of the State Legislature are limited in various directions. Firstly, every bill passed by the State Legislature requires the consent of the Governor, who can return a non-money bill for reconsideration to the Legislature. But if such a bill is passed again by the Legislature, the Governor must give his assent to it. Secondly, the Legislature, cannot vote on items of expenditure charged upon the Consolidated Fund of the State. No demand for grant can be increased by the Legislature nor can the destination of any grant be altered. No fresh grant can be moved, except with the approval of the Governor. Thirdly, some bills cannot be introduced without the previous permission of the President, e.g., a bill imposing restrictions on the freedom of trade, commerce or intercourse within or outside the State. Fourthly, there are some bills which require to be reserved for the approval of the President before they can become laws, e.g., a bill compulsorily acquiring private property for some public purpose, and a bill imposing or authorising the imposition of a tax on the sale or purpose of any such goods as have been declared by Parliament by law to be essential for the life of the community. Fifthly, during the time of the Proclamation of an Emergency, the Parliament gets the right to legislate on all subjects included in the State List. All such laws, however, will cease to operate on the expiration of six months after the Emergency is over. Sixthly, when a Proclamation of an Emergency regarding a constitutional breakdown in a State is in operation, the Legislature of the State can be dissolved and the Parliament may be authorised to make laws with regard to that State. The Parliament may delegate this Legislative power to the President, who can further delegate this power to the Governor or to some other subordinate executive

authority in the State. Such a Declaration can last for three years. During this period, the State is administered by the Centre and responsible government remains suspended. Seventhly, even in normal times, the Parliament can legislate on a subject included in the State List ; (a) if the Council of States declares that necessary in the national interest ; (b) when the Legislatures of two or more States want it ; and (c) when such a law is necessary to implement international obligations.

It may, however, be noted that all the occasions mentioned above, when the Parliament can interfere in the powers of the State Legislature are extraordinary or special in nature. Normally, the State Legislature is supreme over subjects enumerated in the State List. While discussing the Act of 1935, limitations on the power of the Provincial Legislature under the Act of 1935 were discussed. Those limitations were much more serious than the present limitations. Moreover, whereas under the Act of 1935, limitations were imposed by foreign rulers, now they are in the hands of the Union Cabinet, which is a responsible organ of the State.

HIGH COURTS IN STATES

The Constitution provides that there shall be a High Court for each State. For the purpose of this section, the High Court exercising jurisdiction in relation to any Province immediately before the commencement of the Constitution is to be regarded as the High Court for the State concerned.

Appointment of Judges : Every High Court consists of a Chief Justice and such other Judges as the President may, from time to time, consider it necessary to appoint, provided the Judges do not exceed the maximum number fixed by the Parliament for that Court. A Judge of a High Court is appointed by the President after consultation with the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court concerned. In the appointment of the Chief Justice of a State, the Chief Justice of India and the Governor of the State concerned must be consulted. When the office of the Chief Justice of a High Court becomes vacant or he is unable to perform his duties temporarily for some period, the duties of his office will be performed by some other Judge of the Court, as appointed by the President. Additional Judge may be appointed by the President, for a period not exceeding two years to meet a temporary increase in work or to clear off arrears. No person is qualified for appointment as a Judge of a High Court, unless he is a citizen of India, and has for at least 10 years held a judicial office in the territory of India or has for at least 10 years been an advocate of a High Court in any State.

Conditions of service : The retiring age of a High Court Judge is 60 years, whereas a Judge of the Supreme Court retires at 65.

The method for the removal of a High Court Judge is the same as that of a Judge of the Supreme Court. The Chief Justice of a High Court gets a salary of Rs. 4000 per month and an ordinary Judge Rs. 3500. Other allowances and conditions of service of the Judges are laid down by the Parliament from time to time, and cannot be varied to the disadvantage of a Judge after his appointment. Salaries and allowances of the Judges are charged upon the Consolidated Fund of India and are, therefore, not subject to the vote of the Parliament. A permanent Judge of a High Court, if he has held such an office after the commencement of the Constitution, cannot plead or act before any authority in India, except the Supreme Court and the other High Courts. A High Court Judge may be transferred to another High Court by the President, after consultation with the Chief Justice of India.

Jurisdiction and powers of the High Court: Every High Court acts as a court of record and has all the powers of such a court, including the power to punish for contempt of itself. The jurisdiction and powers of the High Courts are substantially the same as possessed by them immediately before the commencement of the Constitution. There were formerly two restrictions on their powers, which have now been removed. They are no longer debarred from hearing cases regarding the revenue or collection thereof. Moreover, every High Court now has got the power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority orders or writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* or any of them for the enforcement of the fundamental rights. This power of the High Court to issue writs is not in derogation of the similar power enjoyed by the Supreme Court. Before the commencement of the Constitution, only the High Courts of Bombay, Madras and Bengal were entitled to issue these writs. Other High Courts were permitted to issue only the writ of *habeas corpus*.

The High Court has got the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. In lieu of this power, the High Court can call for returns from the subordinate courts, make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts. All such rules, however, require the previous approval of the Governor.

All appointments of officers and servants of a High Court are made by the Chief Justice of the Court or any other Judge or Officer appointed by him for that purpose. The Governor of the State can, however, require any such appointment to be made after consultation with the State Public Service Commission. Other rules concerning these officers and servants will also be made by the Chief Justice, but rules regarding salaries, allowances, leave or pensions will require the approval of the Governor. All administrative expenses

of a High Court, including all salaries, allowances and pensions payable to the officers and the servants of the Court are charged upon the Consolidated Funds of the State and are, therefore, not votable in the Legislature of the State.

The Parliament has got the power to extend the jurisdiction of a High Court to a territory other than that of the State in which the High Court has its principal seat. The Parliament can also exclude any territory within the State from the jurisdiction of the High Court. Where a High Court exercises jurisdiction in the territories of more States than one, it will be administratively concerned with the Governor and the Consolidated Fund of the State in which its principal seat is situated.

Independence of the High Court Judges : All rights and guarantees, which are given to the Supreme Court Judges to ensure an independent behaviour on their part and to make them free from undue influence of the Executive and the Legislature are also given to the High Court Judges. Their salaries cannot be reduced to their disadvantage after their appointment. The method for removing a High Court Judge is made as difficult as possible.

Subordinate Courts : The appointments, postings and promotions of the District Judges in any State are regulated by the Governor in consultation with the High Court of the State. A person not already in the service of the Union or of the State shall only be eligible for appointment as a District Judge, if he has been for not less than 7 years an advocate or a pleader and is recommended by the High Court for appointment. Appointments of persons, other than District Judges to the judicial service of a State are made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court concerned. All administrative control over persons working in the subordinate courts, inferior to the post of a District Judge, is vested in the High Court, without taking away from any such person any right of appeal, which he may have under the law regulating the conditions of service.

It is a legacy of British Rule that the judicial and executive functions are combined in the hands of some officers. In the Directive Principles the separation of judiciary from executive is kept as one of the objectives. It is contemplated that in the near future some magistrates will be left only with executive duties. To facilitate this separation, it is provided that the Governor can, by public notification, bring any class of magistrates in the States into the Judicial Service of the State from a date specified in the Notification.

CHAPTER XXXVIII

MISCELLANEOUS PROVISIONS

CITIZENSHIP

The Constituent Assembly had quite a difficult time in laying down conditions, which would entitle a man to be a citizen of India. It was faced with the problems created by the partition of the country. There were some Hindus and Sikhs, who had come from Pakistan as refugees to settle down in India permanently. There were some nationalist Muslims, who had gone to Pakistan because of the panic, but wanted to return to and settle down in India permanently. There was also the problem of the Indians over-seas, who were, at places, ill-treated by the foreign Governments and some of whom, therefore, wanted to become citizens of India. These were some of the immediate problems facing the country, when the conditions for citizenship were laid down.

Five categories of citizens : There are five categories of persons, male and female, who are entitled to be the citizens of India : (i) every person who has got his domicile in the territory of India is a citizen, provided he was born in the territory of India, or either of whose parents were born in the territory of India or who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of the commencement of the Constitution ; (ii) every person who migrated to India from Pakistan *before* July 19 1948 is a citizen of India, provided he or either of his parents or any of his grand-parents was born in un-divided India and has been ordinarily resident in the territory of India since the date of his migration. This provision was introduced to accommodate a huge number of refugees, who were compelled to migrate to India at the time of the partition ; (iii) every person who migrated to India from Pakistan after July 19, 1948 is a citizen of India, provided he or either of his parents or any of his grand-parents was born in undivided India and he has been registered as a citizen of India before the commencement of the Constitution. This advantage is made available only to that person, who has been residing in the territory of India six months before the date of his application ; (iv) every person who migrated from India to Pakistan after March 1, 1947 is also a citizen of India, provided he has returned to the territory of India under a permit for settlement or permanent return. This provision was introduced

to grant citizenship to a small body of nationalist Muslims, who had gone to Pakistan because of panic, but later on returned to India with the idea of permanently settling here ; and (v) every person who is ordinarily residing in any country outside India is a citizen of India, provided he or either of his parents or any of his grand-parents was born in un-divided India and provided further he has been registered as a citizen of India by the diplomatic or consular representative, whether before or after the commencement of the Constitution.

No person is entitled to be a citizen of India, who has voluntarily acquired citizenship of any foreign State. The Constitution recognises only a single form of citizenship throughout India. There is no system of dual citizenship, as prevails in some other federations like U. S. A., where a person is a citizen of his State as well as of his country. In India, no State citizenship is recognised. No State can give preferential rights to those who are residing within its territory, as against the residents of other States in the Union.

OFFICIAL LANGUAGE

The official language of India is declared to be Hindi in *Devanagri* script. The form of numerals to be used for the official purposes of the Union is the international form of the Indian numerals. It is provided that, for a period of fifteen years from the commencement of the Constitution, the English language will continue to be used for all the official purposes of the Union as before. This was necessary to avoid difficulties during the transitional period. Even during this period of fifteen years, the President can authorise the use of the Hindi language in addition to the English language, and of the *Devanagri* form of numerals in addition to the international form of the Indian numerals for any of the official purposes of the Union. The Parliament can retain the use of English language and *Devanagri* form of numerals for some specific purposes even after fifteen years.

Even after fifteen years, judicial proceedings and legislation will continue to be conducted in the English language, till the Parliament directs otherwise. The Governor of a State may, with the previous consent of the President, authorise the use of Hindi or any other language for proceedings in the High Court, except for the judgments of the High Court. Where the Legislature of a State has prescribed any language other than English for the purposes of Bills, Acts, Ordinances, etc., a translation in English of the same must be published under the authority of the Governor, which will be treated as the authoritative text of those documents.

Progress of Hindi during the transitional period : In order to encourage the use of Hindi for the official purposes during the

transitional period of fifteen years, the President is authorised to constitute a Commission at the expiration of five years from the commencement of the Constitution and, thereafter, again at the expiration of ten years. The Commission will consist of a Chairman and some other members representing the different regional languages of India, i.e., Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Sanskrit, Tamil, Telugu and Urdu.

It is the duty of the Commission to make recommendations to the President as to : (a) the progressive use of the Hindi language for the official purposes of the Union ; (b) restrictions on the use of the English language for all or any of the official purposes of the Union ; (c) the language to be used by Courts and for bills, ordinances, rules and regulations ; (d) the form of numerals to be used for any purpose of the Union ; (e) any other matter regarding the official language which may be referred to the Commission. In making their recommendations, the Commission must give due regard to the industrial, cultural and scientific advancement of India and the just claims and interests of persons belonging to the non-Hindi speaking areas in regard to the public services.

The recommendations of the Commission will then be examined by a Committee consisting of thirty members, of whom twenty will be elected by the House of the People and ten by the Council of States in accordance with the system of proportional representation by means of the single transferable vote. The Committee will present report to the President, who may issue directions in accordance with the whole or any part of the report.

A duty has been laid on the Union to promote the spread of the Hindi language and to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India. For this purpose, the Union should endeavour to secure the enrichment of Hindi by assimilating the forms, style and expressions used in Hindustani and in other regional languages of India, without interfering with its genius. Development of Hindi should be secured by drawing, whenever necessary or desirable for its vocabulary, primarily on Sanskrit and secondarily on other regional languages.

Regional languages : The Legislature of a State may adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State. Till such a law is made, the use of the English language will continue for official purposes as before.

The language for communication between one State and another and between a State and Union is the English language,

but two or more States may agree to use Hindi for communication between themselves.

Protection to minorities : The minorities have got a right to approach the President for recognition of their regional language by their State. If the President is satisfied that a substantial portion of the population of a State desires the use of any language spoken by them to be recognised as the regional language by that State, he may direct that such language must also be officially recognised throughout or in any part of that State for such purpose as he may specify.

During the transitional period of fifteen years, no bill can be moved in the Parliament to change the language of courts and legislation, without the previous sanction of the President, who will not give such sanction without considering the report of the Commission referred to above.

Every person is entitled to submit a representation for the removal of a grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the States as the case may be.

The future outlook : Efforts are being made to popularize and enrich the Hindi language, but it will take many years to achieve the ideal. The tendency on the part of its protagonists to *sanskritize* it and thus to make it more and more difficult for the Southern and other non-Hindi speaking States must be avoided in the interests of the language itself. The utility of English is unquestionable for international intercourse and for acquiring scientific knowledge. Scientific terms are lacking in Hindi. Some recent attempts to coin those terms from Sanskrit have not had much success because they are not understandable even by an average man from States like Uttar Pradesh. The controversy between Hindi and Hindustani is dying out. No body can seriously question the right of Hindi to be the official language of India. But it will depend upon the inherent strength of the language itself, as to when it is able to replace English for even official purposes. Right types of text-books in Hindi are lacking in natural as well as social sciences.

Amendment of the Constitution : The method for amending the Constitution is a happy blend of flexibility and rigidity. The method is neither wholly flexible as that of English ; nor it is entirely rigid as that of U. S. A. The Constitution embodies *three methods* for amending the Constitution.

Firstly, there are some provisions of the Constitution, which can be amended by the Parliament through the ordinary process of law-making, e.g., changes in areas, boundaries and names of

the States¹, introduction and abolition of the Second Chambers in the States², laws regarding citizenship³, and provisions in respect of the administration and control of the Scheduled Areas and Scheduled Tribes⁴. In these cases, the method of amendment is as easy as that in England. A simple majority of members in both Houses voting separately may introduce any change. As immediate future adjustments were inevitable in these cases, the Constituent Assembly did not give a touch of finality to these provisions.

Secondly, an over-whelming part of the Constitution can be amended by a Bill introduced for the purpose in *either* House of Parliament. If such a Bill is passed in each House by a majority of the total membership of the House, and by a majority of not less than two-thirds of the members present and voting, the Constitution stands amended, when the Bill is assented to by the President. In this process of amendment, *special* majority in each House of the Parliament is required. There is a certain amount of rigidity about this method because even a minority of one-third of the members present and voting, in either House, can block a change.

Thirdly, there are some *fundamental provisions*, which can be amended in a difficult manner. When a change is desired in the method and manner of the election of the President (arts. 54 and 55); the extent of the executive power of the Union (art. 73); the extent of the executive power of the States (art. 162); the constitution of High Courts for States in Part C of the First Schedule (art. 241); the Union Judiciary (Chapter IV of Part V); the High Courts in the States (Chapter V of Part VI); the legislative relations of the Union and the States (Chapter I Part XI); any of the Lists in the Seventh Schedule; or the representation of States in Parliament; or the amending process itself (art. 368), *not only* the Bill requires to be passed in *each* House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members present and voting; *but also* requires to be ratified by the Legislatures of *not less than one-half* of the States. The Constitution stands amended, when assent of the President to such a bill is received. The reason for introducing a rigid method for amendment, in the case of the aforesaid provisions, is quite obvious. These provisions are federal in nature. Unilateral right of amendment, if given to the Centre, would have been against the federal principles and unfair to the States. Hence a ratification by at least half of the States is required. It may be noted that even the third method, as explained above, is not as difficult as the amending process in U. S. A., where ratification by the Legislatures of three-fourths of the States is required.

1. Art. 3 2. Art. 169, 3. Art. 11, 4. Art. 7, Schedule V.

The initiative for moving an amendment lies with the Parliament. Either House can initiate an amendment. The process of amendment cannot be started by Legislatures of the States or by the people. The powers of both the Houses of the Parliament are equal in respect of the process of amendment. The Constitution is silent regarding the fate of a bill, which is passed by one House of the Parliament and is rejected by the other House. The intention of the Constitution appears to be that such a bill should lapse.

Attorney-General of India : The Constitution provides for an Attorney-General of India. He is appointed by the President, and must be a person who is qualified to be appointed as a Judge of the Supreme Court. He holds office during the pleasure of the President, and receives such remuneration as the President fixes. He has the right of audience in all Courts in the territory of India. He has also got the right to speak in, and otherwise to take part in the proceedings of either House, any joint sitting of the Houses, and any Committee of the Parliament of which he may be appointed a member. But this does not entitle him to vote.

It is the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President. He must also discharge the functions conferred on him by the Constitution or any other law for the time being in force.

Advocate-General for the State : Corresponding to the office of the Attorney-General of India, there is the Advocate-General for each State. He is appointed by the Governor from persons qualified to be appointed as Judges of the High Court. His conditions of service, emoluments, rights and duties are similar to those of the Attorney-General, with the obvious difference of the local setting in which he has to work.

ELECTION COMMISSION

The superintendence and control and the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of election to the office of the President and Vice-President, including the appointment of Election Tribunals for deciding election disputes, are vested in the Election Commission.*

The Election Commission consists of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix. The Chief Election Commissioner and other Election Commissioners are appointed by the President, subject to the provisions of any law made in that

behalf by the Parliament. When any other Election Commissioner is appointed, the Chief Election Commissioner acts as the chairman of the Commission. Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State, the President may also appoint, after consultation with the Election Commission, such Regional Commissioners as may be considered necessary to assist the Election Commission in the performance of its functions. Subject to the provisions of any law made by the Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioner, are laid down by the President.

The Chief Commissioner cannot be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner cannot be varied to his disadvantage after his appointment. Moreover, any other Election Commissioner or a Regional Commissioner cannot be removed from office except on the recommendation of the Chief Election Commissioner. The object of this provision is to make the Chief Commissioner and his subordinates absolutely independent of the favours and frowns of the political parties, including the party in power. This is essential to make elections fair and just and to enable the Chief Election Commissioner to guard the elections against all undue influences.

The President, or the Governor of a State must, when so requested by the Election Commission, make available to the election authorities, such staff as may be necessary to enable them to discharge their duties adequately and effectively.

CHAPTER XXXIX

APPRAISAL OF THE CONSTITUTION

As is but natural, the Constitution has its critics as well as supporters. The following are some of the grounds on which the Constitution has been attacked. Most of what is stated here has already been dealt with in the foregoing pages. Here an attempt has been made to summarise the criticism against the Constitution at one place. Suitable replies have been added wherever necessary.

(1) The Constitution is criticized as very lengthy. No doubt, it is the bulkiest Constitution in the world. Even details of the administrative machinery have been laid down. Such a constitution leaves very little room for the growth of conventions. It binds the future with the wisdom of the present. But the main reason for making a detailed Constitution was that the framers preferred precision and definiteness. They wanted to leave as little as possible to chance and to the vagaries of the legislative majorities. A part of the bulk was inevitable because of the multitude of problems with which the framers were called upon to grapple. As India was new to the working of a fully democratic Constitution it was thought fit to lay down its institutions in clear terms.

(2) The Constitution is sometimes described as a slavish copy of the Constitutions of other countries and the Government of India Act, 1935. It is said that there is nothing Indian about the Constitution. The other side of the picture is that the framers of the Constitution have benefited from the experience of other countries. There is nothing inherently wrong in drawing some of the provisions on the lines of the Government of India Act, 1935. It was not prudent to frame the Constitution on the lines of some ancient Indian political system. There is no full-fledged political system which we have inherited from the ancient India. Even if there were one, it could not suit the modern conditions.

(3) The Constitution is often attacked on the basis of over-centralization. The Central Government has been made too strong in its relation with the States. That is of course true. But the reasons are obvious. The lessons from the past History of India and her present political conditions evidently demanded a strong Centre. India had fallen a prey to foreign invaders and conquerors, whenever her central power was weak. Inter-provincial jealousies and disruptive tendencies had humbled India more than once. A check was needed on a society having caste,

religious, linguistic and territorial prejudices. The Central Governments are getting stronger even in countries which started with a weak Centre like U. S. A. Hence it was not without cogent reasons that the Constituent Assembly gave India a strong Central Government.

(4) The fundamental rights included in the Constitution are said to be hedged by an endless chain of limitations and restrictions. But rights are never absolute. They are inseparably bound with duties. Limitations on rights are necessary in the interests of the society as a whole and for an equal enjoyment of the rights by all the citizens of the State.

(5) The Directive Principles are said to be useless because they are not justiciable. This is not so. The political and moral sanction behind the Directive Principles is quite salutary in its own way. The courts have already taken notice of them in an indirect manner. A constant reminder of an ideal is useful and uplifting. They bind all future Governments in India to some form of socialism and economic equality. What was not practicable to grant Indians now, has been made a duty with the present and future Governments in India to secure for her people as early as possible.

(6) It is said that the notorious powers of the Governor-General and the Governors under the Act of 1935 of making ordinances have been retained as before in the hands of the President and the Governors. But we may not resent the grant of such powers now. Henceforth these may not prove dangerous because they are to be exercised by the popular Ministers. When the Legislature is not in session, a contingency may arise, which requires a particular law. Some one has to be given the power to legislate temporarily to meet the need of such a time.

(7) The emergency powers of the President are sometime subjected to scathing criticism. The provisions enabling the President to suspend fundamental rights in Article 19 and constitutional remedies during an Emergency are regarded as dangerous.

We may not fail to note that, at a time, when the life of the State itself is in danger, there is every justification for taking special precautions. In the safety and security of the State lies the good of the individuals composing it.

(8) The arbitrary right of the Parliament to change the names, boundaries and areas of States and even to abolish any State is often criticised. It is said to be a great threat to the existence of the States and destroys, in a way, the federal character of the Constitution. It may be added that this provision is transitional in nature and was considered necessary in view of the territorial

changes that were likely to be made in the Units. The movement for linguistic states and the controversy over the Report of the States Reorganisation Commission amply justifies this provision. When urgently required changes in Units are made, there would be hardly any necessity of retaining such a provision.

(9) The Constitution is sometimes described as 'hotch-potch'. It is said that contradictory provisions have been made about every political institution. It mixes federalism with unitarism and parliamentary features with presidential. Rights are given by one hand and taken away by another. It is neither rigid nor flexible. But there is the other side also. In making such provisions, the framers have evidently adopted the golden mean and preferred the middle course. Only future can tell whether it was wisdom or an error to do so.

(10) The judges are not forbidden to accept high executive posts. Mr. Fazl Ali while he was a judge of the Supreme Court was appointed as the Governor of a State. This criticism is wholly justified. Such appointments are wrong as a matter of principle. The independence of the Judiciary may be impaired.

(11) The Constitution has been criticized as too legalistic, formal, complex and complicated. It is dubbed as "a paradise for lawyers". Such a Constitution is sure to lead to a good deal of litigation, as is amply proved by the vast number of cases which have arisen out of the Constitution. The reason is that lawyers had taken the most conspicuous part in our national movement. Most of our top-ranking national leaders have been lawyers. In the Constituent Assembly, the lawyers, as a class, were pre-dominantly represented. Dr. Ambedkar, who is aptly described as the chief architect of the Constitution, was himself a lawyer of repute. No doubt the framers of the Constitution, in their attempt to lay down each and everything in precise, definite and clear terms, have given India a complex Constitution; but there were no sinister motives on the part of the lawyers who had a hand in framing the Constitution. Their object was to define the reciprocal rights and duties of the State and the citizens in the clearest terms. But it is hardly possible to say whether they have succeeded in giving the common man in India an understandable Constitution or not.

(12) The burdening of the Supreme Court with the Advisory Jurisdiction is sometimes criticized as wrong. The Supreme Court of America even refused giving such an advice to President Washington, when he approached the Supreme Court for it. The Privy Council of U. K. has declared the imposing of such a duty on Courts as undesirable. It is said that such an advice is unfair to future litigants. It is a matter of common knowledge that the Federal Court of India was also saddled with such duty. The framers of the Constitution felt that the availability of such an advice might avoid much useless future litigation.

(13) There are many provisions of the Constitution, which are said to be derogatory to the spirit of the Rule of Law. Restrictions on life and liberty may be imposed by the Legislature, but the Supreme Court has no right to question the reasonableness of those restrictions. The private property of individuals may be acquired by the State for a public purpose, by giving a nominal compensation and the Courts have got no right to interfere. These provisions of the Constitution can be justified only as a matter of public policy. The framers of the Constitution were deeply conscious of the needs of law and order in India and of the desirability of controlling disruptive elements in the society and those who may attempt to create confusion, chaos and anarchy. That is why they kept control over life and liberty primarily in the hands of the Legislature. Property in India was to be equitably distributed in the interests of the poorest sections. Concentration of wealth in a few hands was to be avoided. This is why the right of private property was limited by the right of the Parliament to take away that property by giving whatever compensation the Parliament may decide as reasonable.

(14) The constitution of the Council of States is often criticized. The grant of equal powers to it in the matters of election and removal of the President, amendment of the Constitution and control over Emergencies are often regarded as dangerous.

We may add a short appreciation. The Constitution is a genuine attempt to blend idealism with realism. It enshrines the well-established principle of a democratic living. Its secularism is a progressive feature. Parliamentarism was a happy choice and keeps continuity with the past. The right of vote is guaranteed to all, which was a bold and courageous step. Communal electorates were rightly discarded. The Judiciary has been made as independent as it was possible. The Scheduled Castes and Backward Classes have rightly been given special protection and privileges. The fundamental rights have been included and their adequate enjoyment is secured by laying a duty on the Supreme Court of protecting them. Good things of life, which could not be guaranteed just at present, have been promised for the future as a matter of duty. Respect for international law and ideals, which make for international peace is advised as a matter of faith. The Constitution gives a good start. No constitution can ever be perfect. Ultimately it all depends upon those, who are called upon to work a constitution. If we learn to place society before self, community before caste and India before areas, the Constitution may provide an adequate machinery to go ahead.¹

1. For detailed criticism and justification, attention is invited to the pages of the book, where the relevant provisions of the present Constitution are discussed.

CHAPTER XL

PARLIAMENTARY DEMOCRACY IN INDIA

India has chosen to be a democracy and that too of the parliamentary type. Democracy, as we all know, is a form of government which derives all powers from the people. A parliamentary democracy means a democracy, where the executive is responsible to and removable by the elected representatives of the people. America is a democracy, but not parliamentary because in that country the Executive is not responsible to the Legislature. England is a democracy as well as a parliamentary form of government.

The fathers of the Indian Constitution were bound to adopt a democratic form. The whole of our national movement was based on the sacred principle underlying democracy that, a people have got the inherent right to govern themselves. They wisely chose its parliamentary form because that was in keeping with our past political institutions set up under the British rule. It meant continuity of political life. The foundations of parliamentary form of government were laid in India in 1892, if not earlier. Since then, parliamentary form of government, in one form or the other, in some cases even rudimentary, had been working in India. The choice was between the parliamentary and the presidential type. It would have been too radical a break with the immediate past to introduce the presidential form. Moreover, the acceptance of parliamentary form was also an act of deliberate choice. The framers of the Constitution evidently preferred it to the presidential form. They regarded it as the most successful form of free government in the world. In the words of Dr. Ambedkar, this type of government has a preference over the presidential form because it ensures, day to day as well as periodic, responsibility of the government to the people, whereas under the presidential form, the responsibility of executive is periodic only.

Conditions essential for its success ; how far found in India :

The parliamentary form of government is a difficult and delicate form to work. There are many conditions which are essential for its success. We may divide those conditions under three main heads : (1) mental attitude of the people ; (2) social climate of the country ; and (3) political institutions necessary.

(1) **Mental attitude of the people :** To be a success, a parliamentary form of government requires that there should be a widely diffused habits of tolerance and compromise throughout

the nation. In the words of Prof. H. J. Laski, "It presupposes a body of citizens, who are fundamentally at one upon all the major objects of governmental activity so; fundamentally at one that the thought of conflict as a way of change is incapable of entering the minds of more than an insignificant portion of the nation." Moreover, the people should feel that the constitutional method is the only permissible method for a change in the government. This form of government cannot work in a country, where a major section of the people do not have faith in the constitutional method. In the words of Lord Balfour, under this form of government, the people "should be so fundamentally at one that they can safely afford to bicker." It is a government by discussion and compromise. It can succeed only when there is a universal acceptance of the method of persuasion and compromise on the part of the people of the country. They should have a faith "that, it is better that the other side should win than that the constitution should be broken." It is a government by a majority. Under it, the majority has no doubt the right to govern, but it should not interfere with the fundamental rights of the minority. A majority which tyrannizes over the minority will end in destroying democracy. While this form of government requires a majority tolerant of the criticism and the fundamental rights of the minority, it also requires a minority, which should be willing to be governed by the laws passed by the majority. The minority should acknowledge the right of the majority to run the government of the country.

It is very difficult to hazard an opinion whether such a mental climate is found in India or not. The peaceful conduct of the general elections shows that the people have a faith in the democratic way of life and in the constitutional method for having a political change. The Congress Party, which has throughout governed in the Centre as well as in the States except Kerala for about two years, is fairly tolerant towards the minorities and their legitimate rights. The minorities, on the whole, have abided by the decisions of the majority. Unfortunately, here and there, we have got instances of unhappy scenes created by the minorities and walk-out staged by them in Legislatures. The disturbances created by some Maharashtrians over the Bombay issue are also unfortunate. But such instances are not many. The faith of the Communists and Rashtriya Swayam Sewak Sangh people in undemocratic methods is dangerous for the success of parliamentary democracy in India.

(2) Social climate of the country : For the success of a parliamentary form of government, a certain type of social climate is absolutely essential, which can be created by the following factors :—

(a) Peaceful conditions of law and order : Democracy cannot succeed unless the conditions of law and order in the country are

fairly satisfactory. In a territory where lawlessness prevails, anarchy and chaos are the order of the day, democracy cannot succeed. To ensure healthy conditions of law and order, strong and stable government is necessary. The condition of law and order in India is admittedly satisfactory. The Government is strong and stable. Disturbances have been few and far between. The framers of the Constitution wisely gave India a strong Central Government. The strength of the Congress Party has assured at least for the time being, a stable Government.

(b) *Liberal education* : Democracy believes in utilizing the opinion of every individual in running the government. In a democracy the people get the type of a government they deserve. It is essential that the people should be prepared for the adequate discharge of the responsibilities of democracy by giving them a liberal education. The education should not only be universal, free and compulsory at the elementary stage, but it should also be liberal. A liberal education means an education which permits a free flow of ideas and thoughts. It should be based on the assessment of conflicting ideologies. Any regimentation of thought is suicidal to democracy. It is not by accident that all undemocratic countries believe in teaching a set philosophy to their people. The Fascist Italy, the Nazi Germany and the Communist Russia teach to their people a particular system of thought to the exclusion of others. In India, more than 80% of the people are illiterate, which is a handicap in the way of democracy. Education, on the whole, is liberal. There are, however, some disquieting features. Recently there has been an attempt on the part of some Governments to interfere in the autonomy of some Universities, which is not desirable. The students are developing a frustrated outlook. The standard of teaching is falling. The economic conditions of the teachers, by the large, are so bad that they are not much interested in imparting the real type of education. The best men of the Universities are going to other professions because those are more lucrative.

(c) *Freedom of speech and expression* : Democracy cannot be a success, unless the people have got the freedom to give expression to their ideas. They should be able to express their thoughts fearlessly, and to publish them whenever necessary. People should be able to meet freely to discuss and propagate their ideas, to hold meetings and to form associations, subject of course, to the condition that violence is not advocated and the constitutional method is adhered to for bringing about any political change. It is further necessary that the people should be kept fully informed about the social and political issues which confront the society. This requires a free press, which should give objective news and impartial views. Any governmental control over the freedom of press, in so far as the latter honestly endeavours to educate the people regarding the problems facing the nation, is undesirable.

In India, the rights to freedom of speech and expression ; to assemble peacefully and without arms and to form associations and unions are enshrined in the Constitution. These rights have been interpreted by the Supreme Court to include the right to freedom of publication and free press. The Government can, however, impose reasonable restrictions on the exercise of these rights in the interests of the security of the State, friendly relations with foreign States and public order. The inclusion of the word *reasonable* shows that the right is given to the courts to decide whether such restrictions are justifiable or not, which is to serve as a guarantee that these rights will not be unreasonably interfered with. On the whole, these rights are securely enjoyed by the citizens of India. A part of the press is owned by the capitalist sections of the society and hence indulges in tendentious writings. As "there is no express prohibition in Article 19 of the Constitution against precensorship, the press here is not as free as in the U.K. or the U.S.A. In several States even now there are laws restricting the right to freedom of expression. A Madras Act of 1948, for instance, made it an offence to publish any statement by a person under preventive detention. The Press (Objectionable Matter) Act, 1952 provides for penalties and security deposits which are unusual in other countries of the world."¹ The power of the Government to control the press in India is certainly more than in U.K. or U.S.A., but there is a general feeling that the Government has not interfered in the legitimate enjoyment of this right.

(d) *Nationalism above sectionalism* : Another condition essential for the success of democracy is that the people should possess, "a genuine sense of nationalism which transcends the barriers of State, language, religion, caste and tribe.....India must be welded into a nation if her democratic government is to succeed"². This factor is conspicuously lacking in India. Various types of petty loyalties—territorial, sectional, linguistic, religious, etc., are eating into the vitals of the nation and are strengthening disruptive tendencies. The agitation over the linguistic provinces and over the Report of the States Reorganisation Commission confirms the above statement. The Akali demand for a Punjabi Subha is a danger, though quietened for the time being, yet serious.

(e) *Social equality and economic justice* : Democracy to be real must include social as well as economic democracy. Social democracy means that the society should not recognise any differences based on caste, creed, or sex. In India our society is caste-ridden. Untouchability has been made an offence punishable by law under the Constitution. But the evil still persists. The Hindus and Muslims still do not mix socially as it should be. Economic democracy means equal economic opportunities. It means an

1. A. B. Lal (Ed.) : The Indian Parliament, p. 262.

2. Srinivasan : Democratic Government in India, pp. 231-32.

economic justice for all. It further means a right to get adequate living wage for all those who are engaged in socially necessary work. It means reasonable hours and good conditions of work for the staff. It means economic sufficiency for all, before there is plenty for some. It means freedom from hunger and elementary wants of clothing and shelter. India is yet far behind the ideal of economic justice. The Government has accepted socialist society as the goal. Many steps have been taken to better the economic lot of the common man. But much remains to be done. The people can never be fundamentally at agreement with one another, unless this condition is satisfied. Faith in the constitutional method is bound to be skin-deep on the part of those, who are denied the elementary necessities of life. Unless glaring inequalities of wealth are removed and the common men are assured tolerably good living it may be too much to expect that they may not any day suddenly decide to end the system by violent means. Herein lies the most serious danger to parliamentary democracy in India. Herein lies the most serious gap in professions and practice.

(3) Political institutions necessary : Our experience of the working of parliamentary governments shows that certain political institutions are also necessary for the success of this type of government. Some of these institutions are : (a) organised Political Parties ; (b) an effective Opposition ; (c) neutral, honest and efficient Public Services ; (d) independent Judiciary ; (e) self-governing Local Institutions ; (f) a purely constitutional Head of the State ; and (g) a non-partisan Presiding Officer of the Parliament.

(a) Well-organised Parties : For the success of parliamentary democracy, Political Parties should be well-organised. They should be organised on the basis of social and economic programmes. The Parties should be well-knit and well-disciplined. This test is not adequately met by the Parties in India—except the Congress and possibly the Communist and the Socialist Parties. The party system in India lacks much that is desired. "The Congress in spite of its able leadership lacks both the organisation and discipline that are normal in the West. At the State level, it is definitely cracking up. It is split into a multitude of cliques with no differences of principles or policies but personal ambitions and loyalties.....The Socialist Party which believes in the democratic method is weak among the masses and the Communists, who are strong among sections of the country, do not believe in the democratic method. Other parties are hardly political, based as they are on sectional, religious and other differences and cannot be the guardians of a secular democracy."¹

(b) An effective Opposition : An effective Opposition is absolutely essential for the right functioning of parliamentary democracy. It makes government by discussion real. It keeps the

1. Srinivasan : *Democratic Government in India*, p. 232.

government alert about the needs and welfare of the society. It provides an alternative government, when the party in power fails to satisfy the people. It makes the day-to-day responsibility of the government real. So such is the importance of the Opposition in a parliamentary government that the Leader of the Opposition in England is paid a salary by the Government. This requirement is totally lacking in India. A single party, the Indian National Congress, dominates the scene. "Out of 499 members in the Lower Chamber, the Congress claims as many as 363, the Praja Socialists have 23, the Communists and pro-Communists now claim as many as 28, and the Communal Parties have 12 members. The Congress has a comfortable majority and has to face practically no Opposition. The Opposition Parties are bitterly divided and indeed not one has so far been officially recognised as the Opposition."¹

Hence in India, we have almost a one-party rule. This has not yet degenerated into a dictatorship, but any day that might happen. Whatever the reasons for the absence of an effective Opposition to the party in power, the need for such an Opposition is there. Parliamentary government may not succeed for a long time to come without an Opposition. Hope was felt for a time that the Praja Socialist Party might fill this gap some day, but the split in its ranks and the formation of a separate Socialist Party by Dr. Ram Manohar Lohia out of the dissentients, had ended all such hopes. The emergence of the Swatantra Party on the Indian political scene in 1959 has, once again, provided some chance for having an effective Opposition to the Congress rule at the Centre and in some of the States because it is, for the first time, that the rightist forces in the country have been provided with a rallying point.

(c) *Neutral, honest and efficient Public Services* : Democracy cannot be a success unless the Public Services are neutral in politics, above corruption and efficient in the discharge of their duties. The duty of the Public Services in a parliamentary government is to execute the policy of the Party in power. In such a form of government, different parties change hands in running the government. Whichever the party in power, the Services must implement its policy. It is dangerous for the success of this form of government that the Services should prefer the rule of one party to that of another. In order to obtain such a Public Service, their personnel should be appointed on a permanent basis. They should hold office during good behaviour. They should be paid good salaries and recruitment to Services should be made on merit. Most of these conditions are obtainable in India. The Services are recruited by independent Public Service Commissions and hold office during good behaviour. In some cases, the salaries are not adequate, which is the major cause of corruption in those Services. This is

1. A. B. Lal (Ed.) : *The Indian Parliament*, p. 271.

especially so with regard to the junior police officers, staff employed in courts, clerical staff in some of the Government Departments and Services working in Local Bodies. The tendency on the part of some members of the Legislatures belonging to the party in power, to approach Services for private work is objectionable. Some of the Ministers interfere too much in the details of the administration, which is also not good. The charge that during the last general elections some of the Service personnel secretly worked for the party in power is reprehensible, if true.

(d) *Independent Judiciary*: An independent judiciary means judges, who are free to give impartial judgments. If at the time of giving judgments, judges are led by some extraneous considerations like a temptation to get bribe, a fear of the Executive or the Legislative power when the judgment is given one way and not the other, the justice administered cannot be impartial. For the installation of such a judiciary, it is essential that the judges should be appointed on merit and during good behaviour. Their method of removal should be made as difficult as possible. They should be able to ignore the favours and frowns of the Executive and the Legislature of the country while giving judgments. They should be paid good salaries. Most of these pre-requisites of a good judicial personnel are present in India. The judges of the Supreme Court and the High Courts are appointed by the President after taking into consideration the advice of the highest Judiciary in the country. The judges cannot be removed from office except by method of impeachment, which is extremely difficult. They are paid good salaries. The judiciary in India enjoys a great reputation for independence. This is certainly true with regard to the higher judiciary. There are, however, a few disquieting features. The well-known principle that judges during their service or after their retirement should not be appointed to big administrative jobs is not being observed. Mr. Fazl Ali was made the Governor of a State, while he was a judge of the Supreme Court. If judges know that they can be offered glittering rewards by the Executive, either during or after service, they are apt to go astray while giving judgments in their attempt to keep the Executive pleased. The Executive and Judiciary have not been separated, in spite of the fact that one of the Directives of State Policy requires that steps should be taken to do so. The Prime Minister of India and some of the Ministers of the Union have criticized the working of Judiciary in the Parliament, which was not desirable. As a principle, the executive and the judiciary must abstain from criticising each other. A certain member of the House of the People once said, "Judges lack the requisite equipment, are too intellectulized and are too much divorced from the life of the common man."¹ Such a talk lowers the prestige of the Judiciary and should be avoided.

1. Quoted in : *The Indian Parliament*, p. 267.

(e) *Self-governing Local Institutions* : Local self-government has been described as the cradle of democracy. Local self-governing institutions serve as training centres for future politicians and statesmen. They inculcate the habit of co-operative effort and teamwork in those who run these institutions. The people, at large, become politically conscious and familiar with the method and working of democracy. Hence it is essential for the success of democracy in India that people should be allowed to govern themselves in Local Bodies. One of the reasons why parliamentary democracy has not been much of a success in France is that the people in that country are governed by the Centre, rather than are self-governing in the affairs of their Local Bodies. France is described as a democracy at the top, but an Empire at the bottom. In India, whatever Local Institutions are functioning at present, owe their origin to the British rule. In the past, they had remained too much subject to official control, but now they are gradually coming up to the required standard. Their chief defects are : lack of adequate funds, apathy of the common man, corruption in services and personal intrigues on the part of those who run them. All this makes it necessary that the State Governments should keep Local Bodies under their over-all supervision. Popularization of Panchayats as self-governing institutions has been made one of the Directives of State Policy. Panchayats are coming up everywhere and are making good progress. On course, they have their defects, mostly born of illiteracy and poverty of the rural areas. But all the same, they have their undeniable utility in the present conditions of India. Healthy local self-governing institutions should be developed in the interest of democracy itself. They should be allowed to learn by making mistakes. Democracy remains skin-deep in a country, where people are not allowed to govern themselves in their local affairs.

(f) *A purely constitutional Head of the State* : In a parliamentary democracy, all executive power must lie in the hands of the Cabinet, which is accountable for the exercise of that power to the Parliament. Such a form of government also requires a titular chief or a constitutional Head to serve as the formal executive. The experience of the working of the British Constitution for the last two hundred years or so tells us that the nominal Head of the State must be content to play a purely constitutional role. In India, the President is the titular Head of the State. Unfortunately, the Constitution has given him some powers through which he may be able to take executive action against the wishes of the Cabinet. Such powers are presidential in nature and are inconsistent with a parliamentary democracy. At present, the President and the Prime Minister belong to the same party and there is a perfect harmony between them. But if at some future date, the President happens to belong to a party other than that of the Prime Minister, the powers of the

1. Quoted in : *Parliamentary Democracy in India*, edited by A. B. Lal, p. 267.

President referred to above may impair the unity of the Executive and render its responsibility to the Parliament farcical. The President of India has publicly criticised the working of some Ministries especially the Education Ministry, which is, perhaps, constitutionally not sound. Such public criticism needs to be avoided. The President is to exercise influence, and not power.

(g) *A non-partisan Presiding Officer of the Parliament*: The real game of a parliamentary democracy is played on the floor of the popular House of the Parliament. Its presiding officer is usually called the Speaker. The experience of the British political life tells us that the Speaker has a special role to play in such a form of government. He should ensure that the game of parliamentary life is played with clean hands. He should see that the Opposition gets an adequate opportunity to criticize the Government and to explain the former's point of view. He should see that the members are free to express their ideas boldly. He should also ensure that the majority is allowed to govern and is not obstructed by the Opposition. For the performance of such onerous duties, the Speaker should be a person neutral in politics and a non-partisan in character. The Speaker in India continues to be a party-man. Although Mr. Mavalankar had started some healthy traditions about the Speaker's role, he continued to be a party-man till the end of his life. The sooner we start in India, the various conventions which govern the office of the Speaker in England, the better it would be for the success of democracy.

Thus in India, we have some helpful and others unhelpful features for the success of the parliamentary democracy. It is yet too early to say that the parliamentary government has succeeded in India. It has certainly not failed. Prof. Srinivasan feels, "The system of cabinet government since its inception in 1947, has been working with a fair degree of success in the Union and in the majority of the States." Of course, there have been governmental crises in some of the States like Punjab, Bengal, Madras, Travancore Cochin, Pepsu, Kerala and Vindhya Pradesh. But such developments have not become common. The success of the system is partly due to the wisdom of the Congress and some of its leaders. Most of the foreign observers feel that we have worked parliamentary democracy with a fair degree of success. The late Mr. G. V. Mavalankar, in one of his articles concludes "that parliamentary democracy in India is functioning on progressive lines and India can well be proud of it".

PART VI

STUDIES IN EVOLUTION



CHAPTER XLI

THE INDIAN STATES

(PRINCELY INDIA)

Before the introduction of the present Constitution, the map of India was divided into red and yellow colours. The red colour showed territories of the British Indian Provinces, which were directly governed by the British Government. The yellow colour indicated territories of the Indian States, which were ruled by the Indian Princes. The two parts were usually called the 'British India' and the 'Indian India', or simply the Provinces and the States respectively. Under the present Constitution, all Units have been called States, including even the former Provinces.

The Butler Committee, which reported in 1929, puts the number of the Indian States at 562. The Indian States were not only numerous, but they also differed widely in territory, population and resources. On the one extreme, there was "Hyderabad with an area of 82,700 sq. miles, a population of 16½ millions and an annual revenue of about 10 crores of Rupees and on the other, Bilbari with a few acres of land, a population of 27 and an annual revenue of eighty Rupees." In Kathiawar there were in all 283 States, out of which only 9 were of a respectable size. The remaining "274 States had a total revenue of about 135 lakhs of Rupees. This sum had to maintain 274 ruling families and was expected to run 274 separate, semi-independent administrations". Taken together, the population of all the States was about 26% of the total population of India and they covered about 46% of the total area of the country.

The territories of these States were inter-mixed with the territories of the British Indian Provinces throughout the length and breadth of India. Hence the economic and political development of one part depended upon the other. None could stand without the other. The people of both these areas were of the same stock. They were culturally and religiously one. They spoke the same language. There was free social intercourse between them. The States, on the whole, were very backward, educationally,

economically and politically, as compared with the Provinces. In the States, literacy was only 3% with only three Universities, whereas in British India, literacy was more than 10%. Industrially, they were also far behind the British India. Trade in them had not flourished. Agricultural methods were even more primitive. Politically, these States were, one and all, autocracies with a semblance of representative institutions here and there. Travancore and Mysore were most advanced in this respect. The administrations were generally inefficient and corrupt. The administrators were anything but popular. The degenerate systems were maintained with the help of the British bayonets.

Evolution of Paramountcy : According to Sir William Lee Warner the relations of the British Government with the Indian States have passed through three distinct periods. To start with, the British Government followed the policy of neutrality and non-intervention in the affairs of the Indian States. The Princes were treated as independent rulers, with a few exceptions. It was described as "*the policy of ring-fence*" and was followed from 1757 to 1813. This policy ill-fitted the Imperialistic designs of the British administrators. The second period started in 1813, when Lord Hastings initiated the policy of "*subordinate isolation*". The object of this policy was to extend the protection of the British Government to as many States as possible, making the influence of the British Government paramount throughout India. This policy continued up to 1858, when the Government of India passed directly into the hands of the Crown. The third period began in 1858, when the Government began to follow the policy of "*subordinate union and co-operation*." The States had proved their utility to the British Government during the days of the Mutiny. The British Government wanted to win them permanently on its side against the progressive forces. The Proclamation of 1858 assured the Princes, that their territories would not be annexed any further and that the British government would respect the "*treaties and sanads*" entered into with them by the British Government in the past. For some years, the Princes were given a free hand to run their respective administrations. Lord Curzon, who was the Governor-General of India from 1899 to 1905 once again introduced rigid internal and external control over the States. In 1916, Lord Hardinge started the policy of consulting the Princes and in 1921 the Chamber of Princes was introduced as a permanent advisory body on behalf of the Princes.

Relation of the Indian States with the British Government : The actual relation of the States with the British Crown has remained a matter full of indefiniteness and is often summed up in the word Paramountcy. It was said that the British Crown was paramount over the Indian States, or that it possessed the rights of Paramountcy over them. Paramountcy is a very vague term. It summed up the actual relationship of the British

Crown with Indians States as it existed up to August 14, 1947. But no Governmental document has defined or described exactly what this relationship actually was. In a Government of India pronouncement of the year 1877, it was declared, "Paramountcy is a thing of gradual growth, established partly by conquest, partly by treaty and partly by usage." In other words, the actual power that the British Government enjoyed over the States depended on three factors : (i) rights arising out of the conquest of some States by the British Government ; (ii) rights arising out of various treaties or agreements entered into with the States ; and (iii) rights acquired by usage, viz., because such rights had been actually exercised over them in the past. It was said, "Paramountcy is only a part of the prerogative of the Crown," meaning thereby that it was the unlimited right of the British Crown to interfere, as a matter of precedent, in the affairs of the States.

This infinite vagueness about the term Paramountcy had always been a cause of great irritation and resentment for the sensitive and progressive Princes. They were often puzzled at the arbitrary manner in which the British Government interfered in the affairs of the Indian States. In actual practice, the British government claimed all kinds of powers over them. It was, therefore, natural that some of the Princes began demanding that the rights of Paramountcy should be stated clearly. It was also for this reason that they welcomed the setting up of the Butler Committee in 1927, which was asked to investigate the affairs of the Indian States and to report, apart from other things, as to the extent of power possessed by the British Crown over the Indian States. The Report of the Butler Committee did not help in the clarification of the concept of Paramountcy. The Report stated, "It is difficult to define Paramountcy. Paramountcy must remain paramount. It is a living and growing relationship, shaped by circumstances and policy, which is a mixture of history, theory and modern facts." This was a mere question of the repetition taken up in the Government of India pronouncement of 1877, quoted above.

The wordings of some of the treaties and *sanads*, which existed between the Crown and the States, suggested a relationship of equality between the British Crown and the States. Their language was that of international law and public relations, which also implied equality. From these *sanads* and treaties some of the Rulers had concluded that their relationship with the British Government was that of an independent country with another similar country. This was the view of H.E.H., the Nizam of Hyderabad. All such doubts were set at rest in a letter of Lord Reading to the Nizam of Hyderabad in 1926 in which the Viceroy wrote, "The sovereignty of the British Crown is supreme in India and no ruler can claim to negotiate with the British Crown on the basis of equal footing. The supremacy of the British Crown over the Indian States is independent of the treaties. The British

Government in practice never admitted any limitation on their power to interfere in the affairs of the Indian States."

Relationship of Paramountcy : The relationship of Paramountcy, i.e., the *actual relationship* that existed between the British Crown and the Indian States may be summed up as follows :

Firstly, in the British Law the Indian States were treated as foreign territories. This was merely a formal matter. Secondly, the British Government never recognised any legal limits on its authority to deal with the States in whatever way it liked and claimed in *practice* full sovereignty over them. Thirdly, the States were allowed to possess only limited military establishments. No State could claim to have an unlimited army even at her own expense. Fourthly, the Crown considered itself generally responsible for preserving law and order in the territories of the States and to ensure efficient internal administration. Fifthly, the Crown exercised exclusive control over the foreign relations of these States with outside powers. Not only this, even the relations of these States *inter se* were controlled by the Political Department of the Government of India. Sixthly, the States were considered duty bound to render subordinate military co-operation to the British Government in resisting foreign aggression and for the purpose of maintaining internal peace and order in any part of the country. This meant that the military establishments of the States could be used by the British Government for both external defence and internal order. Seventhly, the British Government claimed and exercised extra-territorial jurisdiction over the British subjects and foreign nationals residing in the States. Eighthly, the British Government was the final Judge to decide all disputes or differences between itself and the Indian States, in whatever manner it liked. Ninthly, the British Crown gave formal recognition to every Prince, who ascended the throne of an Indian State and in the case of the failure or absence of a natural heir, gave assent to the exercise of the right of adoption by the Prince and made arrangement for the administration of the State during the minority of a Prince. And finally, some States were made to pay varying amounts of annual tributes to the British Crown as a recognition of their subordinate position.

Thus it is clear that the rights of Paramountcy amounted almost to the right of sovereignty. One is tempted to steer clear of all this infinite vagueness about the word Paramountcy, by defining it as 'the legal and factual sovereignty of the British Crown over the Indian States, which permitted a varying degree of freedom to the Princes to run their internal administration', without doing much outrage to actual facts. The Princes, did not like to believe it, and the Crown was hesitant to say so, but the facts clearly revealed that Paramountcy amounted to full legal sovereignty in practice, with a varying degree of latitude given to

the Rulers in carrying on the internal administrations, so long and so far as it was not objected to by the British Government.

Machinery of control over the States : The administrative control by the British Crown over the Indian States was exercised by the Governor-General of India through the Political Department of the Government of India, which was under the direct charge of the Governor-General. At the head of the Political Department was placed the Political Advisor, whose position was like that of the Secretaries of other Departments and who advised the Governor-General in all matters concerning the States. 'Agencies' were established in various 'areas', as intermediaries between the Political Department and the States' administrations and each of these 'Agencies' was placed under the charge of an Agent to the Governor-General. In some of the big States, the Residents were appointed by the Governor-General to keep a watch on the administration of the State on the spot. Lord Harding in 1916 introduced the practice of holding Conferences of the Princes to consult them on various matters regarding the States.

On February 8, 1921, the Chamber of Princes was established as a permanent consultative body of the Princes. The Governor-General was the President of this body. The Chamber consisted of 121 members, which included 109 Rulers of the more important States, who were members in their own right. The Rulers of the less important States, about 126 in number, elected 12 members from among themselves. The remaining States, about 327 in number, were considered far too insignificant and small to be represented in the Chamber. The Chamber met, ordinarily, once a year. A Chancellor and a Pro-Chancellor were elected annually for the Chamber from amongst and by its members. A Standing Committee of 7 members was also elected including the Chancellor and the Pro-Chancellor as *ex-officio* members. The Chamber was a merely deliberative, consultative and advisory body. It had no legislative or executive functions. Its membership was not compulsory. In spite of the various handicaps from which the Chamber suffered, it served a useful purpose because it enabled the Princes to meet and discuss together many political problems. The machinery was admittedly reactionary. During the difficult days of the National Movement, the machinery came handy to the Government to keep the Princes off the Movement. The machinery was also used by the Princes to formulate and press their demands on the British Government, from time to time.

States and the Act of 1935 : The relationship, described above, continued till the end of British rule in India. On April 1, 1937 the Provincial Part of the Government of India Act, 1935 was introduced in the Provinces. The Central Part of the Act contemplated a federation for India, which could have come into existence by the joining together of the Provinces and a certain

number of the States. The Central or the Federal Part of the Act was not introduced because it was found utterly unacceptable to the national opinion in India. All the same, it is worthwhile to know the position that was accorded to the States under the Act of 1935, which may be described as follows :—

(i) It was made a condition precedent for the introduction of the Federation that at least such a number of Indian States must be willing to join it, which would be entitled to at least 52 seats out of 104 reserved for the States in the Council of State and their population should not be less than half of the total population of the States. Thus Federation was to come into existence, only if approximately half of the States were willing to join it. This showed an anxiety on the part of the British Government to bring at least some Princes into the Federation, without whom the Government was not prepared to introduce even partial responsibility in the Central Government, as was contemplated in the Act of 1935.

(ii) The States were to join the Federation on the basis of the Instruments of Accession, which were to be executed by the States and which could vary from State to State. It was perfectly open for the Crown to reject such an Instrument on the ground that the State in question was not prepared to concede sufficient powers to the Federation. The Crown could also draw a basic Instrument of Accession, showing the minimum powers that a State must give to the Federation before it could join it. This meant that the range of the Federal authority could differ from State to State, which was a serious matter because it could give rise to many difficulties and complications.

(iii) The representation given to the States in the Federal Legislature, i. e., the Council of State and the House of Assembly was much more than their population or the revenue paid by them to the Federation justified. In the Council of State, these were given 104 seats out of 260 and in the House of Assembly, 125 seats out of 375. Thus in the case of the House seats were $\frac{1}{3}$ and in the case of the Council the share of the States was even greater. When one remembers that the population of the Indian States was roughly $\frac{1}{4}$ of the total population of India, it is easy enough to see that the States were given a favoured position in the Federal Legislature.

(iv) The Governor-General and the Governors were charged with a special responsibility to safeguard and protect the honour and the privileges of the Rulers and the rights of the States.

(v) The representatives of the States were to be nominated by the Rulers of the States. This provision was totally unacceptable to the leaders of the nationalist opinion in India, who feared that only reactionary element would be sent to the Federal Legislature, with whom it would be difficult to work.

(vi) All disputes arising out of the Instruments of Accession between the States and the Federation were to be decided by the Federal Court. Under Paramountcy, it may be remembered, all such difference of opinion between the British Government and the States used to be resolved according to the unilateral will of the Paramount power.

(vii) Under the Act of 1935, the designation of the Governor-General was changed to the "Governor-General, and Crown's Representative." As Governor-General, he was to administer the British Indian Provinces and as 'Crown's Representative' he was to control the affairs of the Indian States. Two separate persons could be appointed to these two posts. Even one and the same person could work in both these capacities, as was actually the case, from April 1, 1937 till August 14, 1947. This change in the designation was made as a concession to the claim of the Indian States that they were under the British Crown and not under the Government of India. This was, of course, a historically incorrect claim. The claim was made by the Princes because they were afraid lest control over the States should also be passed over to the progressive forces along with the Government of India, when India became free.

(viii) In one form or the other, the control of the British Government over all the States would have continued even after the formation of the Federation. In all subjects not ceded to the Federation by the States, they were to remain under the British Crown. The States not joining the Federation were to continue, as before, under the Paramountcy.

Indian States just before Independence : The Indian States were given a constitutional veto over the introduction of the Federal Part of the Act of 1935. The Federation was not to come about, till about half of them were prepared to join it. With the dropping of the federal scheme in 1940 by the Government that constitutional veto was taken away from the hands of the Indian States. A period of uncertainty again started with regard to the place of the States in the future political set-up of India. By the time of the Cripps Mission, it became reasonably clear that the British India would have to be made free after the War. In the Cripps Proposals, there was a clear indication that the States would participate in the Constituent Assembly, which was to draw up the Constitution for a free India after the War. In the Cabinet Mission Plan, the States were given representation in the Constituent Assmblly, and the method of their representation was to be settled with their Negotiation Committee.

From the Cripps Proposals and the Cabinet Mission Plan it was also clear that the States would not be compelled to join the Indian Union. This attitude of the Government was resented by the Indian leaders. They made it clear, again and again, that

India, without the States, could not stand politically and freedom for the British India must include freedom for the Indian States. They could not be allowed to remain pockets of British influence in India, especially because their territories were inter-mixed with those of the British India throughout the length and breadth of the country. Just before Independence, when the Mountbatten Plan was published, it became clear that the British Government had decided to part with power over the Indian States, but would not compel the States to join either the Indian Dominion or the Pakistan Dominion. They would be free, either to join any one of the Dominions or even to declare themselves independent. The Indian leaders, while appreciating the willingness of the British Government to surrender their power over the States, strongly deprecated any encouragement to the States to declare themselves free. The viewpoint of the Indian leaders was that the geographical situation of the States was such that they must accede either to India or to Pakistan; otherwise the Dominions could never become properly integrated States. The British Government took up an irrevocable stand that they were not in a position to compel the States to do so. This idea was finalized in the Independence Act of 1947, according to which Paramountcy of the British over the Indian States lapsed after August 14, 1947. It was left for them to decide whether to remain independent or to join either of the two Dominions.

The situation, thus created, was full of dangerous possibilities. What would have happened to India, if some of the States had refused to be integrated with India and continued to remain pockets of foreign influence. Some of the British diehards in England and the British bureaucrats in India evidently desired development on those lines. Some of them thought that they were leaving India divided not only into India and Pakistan, but in about a couple of hundred autonomous States or principalities which would weaken India for all times to come. It would have been the worst form of Balkanization of the country. The Indian politicians were suddenly faced with this dangerous possibility. It is now past history, how creditably the Indian leaders solved the problem of the Indian States under the astute statesmanship of Mr. Valabhbhai Patel, who became the Head of a newly created States' Ministry on July 5, 1947.

PROCESS OF INTEGRATION, ACCESSION AND DEMOCRATIZATION

gufh
Soon after Independence, development and progress in the Indian States had taken *three* main lines. Firstly, the four hundred and odd States were to start with, integrated into a dozen or so big Units of respectable size. Secondly, all the States except Kashmir fully acceded to the Indian Union. And thirdly, instead of inefficient autocracies, which generally prevailed in these States, fully democratic institutions were established in almost all those

States. A brief description of these three developments now follows :—

— **I. Process of Integration :** The States in India, left after the formation of Pakistan, were in the neighbourhood of about 450. We have already stated that these States differed widely in size. Some of them were as big as the former British Indian Provinces, some as small as a village. Unless the smaller States were prepared to integrate themselves into bigger States or merge into the adjoining Provinces, any future progress was impossible.

When the present Constitution was finalized, the 450 Indian States were reduced to 9 Part B States and 10 Part C States (which include the four Chief Commissioners' Provinces). The actual process had proceeded on the following lines :—

— **(a) Merger of States with adjoining Provinces :** Quite a large number of the States have merged into the adjoining Provinces. The process first started in Orissa. On January 1, 1948, the advice of Sardar Patel was accepted by 24 States of Orissa and 14 States of the Central Provinces and all these 38 States agreed to be merged in Orissa. The Deccan States, excepting Kolahpur joined Bombay on February 19, 1948. The Gujarat States followed suit on June 10, 1948 and became an integral part of Bombay. The process was followed in other Provinces. Makrai joined C.P., Banganapalle and Pudokottah merged with Madras ; and Loharu and Pataudi joined East Punjab. Similarly States in U. P. and other Provinces merged into their respective Provinces. In doing so, the people of the States enormously increased their prospects of happiness and prosperity. They at once became co-sharers in the democratic processes working in the Provinces. They acquired a voice in the Government of the former Provinces and that of the Government of India.

— **(b) Grouping of smaller States into bigger Units :** Many small States grouped themselves to form a big State or joined the bigger States. The Ruler of usually the most important State was appointed as Rajpramukh to function as a constitutional head of the bigger Unit. These Rajpramukhs were provided with interim Ministers to aid and advise them in the discharge of their administrative functions. The Units were allowed, in due course of time, to set up their own Legislatures and to have proper Ministries responsible to the Legislature. The first such Union was formed on February 15, 1948, when the Union of Saurashtra came into existence. This Union was made up of more than 30 former States. All the States in the East Punjab joined together to form Patiala and Eastern Punjab States Union or briefly, PEPSU. The States in the Simla Hills integrated themselves into Himachal Pradesh. The biggest of such Union was Rajasthan. Other similar Unions were Madhya Bharat, Travancore-Cochin and Vindhya Pradesh. All these Unions were called Part B States and were

given a status, almost similar to that of the former Provinces or Part A States.

✓ **(c) Integration into Chief Commissioners' Provinces :**

Some of the very backward and small States, where administrative machinery was almost primitive, were constituted into the Chief Commissioners' Provinces, or Part C States and were taken directly under the administrative charge of the Central Government. Himachal Pradesh was made a Part C State. It was treated almost as a Part B State and was placed under the charge of a Lt. Governor. Other such States which were included in the List of Part C States and were taken under the charge of the Central Government were : Ajmer, Coorg, Bhopal, Bilaspur, Cooch-Bihar, Delhi, Kutch, Manipur and Tripura.

Mention may also be made of Hyderabad, Jammu and Kashmir, and Mysore which were so big that they were treated as separate Units and were treated as Part B States, along with the other integrated Unions.

✓ **II. Accession of the States to the Indian Union :** In the Independence Act, 1947, the States were also given the option to declare themselves absolutely free, which was bitterly resented by the Indian leaders. The States Ministry which was formed in July, 1947, resolutely set out to solve the problem of accession of the States to the Indian Union, without which the future of India as well as that of the people of the States presented a gloomy picture indeed. The new rulers of India took up the position that they must join either India or Pakistan. Their geographical position permitted no other course. Although, India was declared a Republic, the States Ministry made a timely declaration that they had no desire whatsoever to do away with the Princes, who were promised an honourable place in the future set-up of the States. Their personal rights and privileges were assured, provided they were prepared to become constitutional heads, and would not stand in the way of the welfare of their people and were prepared to accept the right of their people to govern themselves. Shortly thereafter, Lord Mountbatten, in his speech to the Chamber of Princes on July 25, 1947, made an earnest appeal to the Princes to accede to either of the Dominion, at least with regard to Defence, External Affairs and Communications. As a result of the statesmanlike policy of the Government of India, advice of Lord Mountbatten and many other causes which would be detailed later, the Princes saw the writing on the wall and vied with one another in acceding to the Indian Union. The advice of Mr. M. A. Jinnah and some British officials that the States should better remain independent was unceremoniously ignored by the Princes. Events moved so fast in this direction that by August 15, 1947, all the States lying within the territory of India except Junagarh, Kashmir and Hyderabad had acceded to the Indian Union !

The Nawab of Junagarh declared accession to Pakistan, which was against the wishes of the people of the State, who were overwhelmingly in favour of joining India. Immediately after its accession to Pakistan was declared by the Nawab, the people of the State rose in rebellion against the Nawab as a result of which he fled to Pakistan. A plebiscite was held in the State in which the people decided by 190779 votes to 91 to accede to the Indian Union. Junagarh was later merged with Saurashtra. The territory of Junagarh was surrounded on all sides by the territory of the Indian Union. Its accession to Pakistan would have left an ulcer in the very heart of India.

Hyderabad continued to create trouble for a good deal of time. Its rulers had for generations toyed with the idea of becoming completely independent of the British control. The readers will remember the snub which Lord Reading gave to the Nizam of Hyderabad in 1926, when the latter aspired to negotiate with the British Government on a basis of equality. The Rulers of Pakistan and the Muslim Advisers of the Nizam also egged him on to persist in his old ambition. Protracted negotiations followed between the Government of India and the Nizam. The people of the State, who disagreed with the policy of the Nizam and his Advisers were victimized and were subjected to all sorts of atrocities by Razakars under the leadership of Kasim Razvi. All advice and warning by the Government of India were ignored. Drastic action became necessary to end a condition of virtual lawlessness in the State. The Indian army entered Hyderabad on September 13, 1948, to restore law and order and to protect the innocent people. The police and the army of the Nizam resisted the Indian forces for a while, but eventually collapsed. Full accession of Hyderabad to the Indian Union soon followed.

Kashmir remained a problem. In the beginning, the State remained undecided on whether to join India or Pakistan or to declare itself free. In October, 1947, Kashmir was invaded by the frontier tribes under the lead of Pakistan. The Maharaja of Kashmir applied for accession to India, when the raiders had already overrun a good part of the State and were about to capture the aerodrome at Srinagar. The accession was accepted by the Government of India. Troops were immediately rushed to Srinagar by air and the tide of the raiders was stemmed. This raid later developed into an invasion, which led to a regular fighting between India and Pakistan. India approached U. N. O., and a cease-fire was agreed, under which a major part of the State is held by India and the remaining portion by Pakistan. The Government of India even declared that the final accession of the State to India or Pakistan would be eventually decided by means of a plebiscite of the people of the State when peaceful conditions in the State are created for holding such a plebiscite. Negotiation then followed for holding a plebiscite under the auspices of the U. N. O. But no agreement

was reached between India and Pakistan. India insisted that Pakistan must first withdraw her armed forces from the territories of Kashmir because she was an aggressor, otherwise peaceful conditions could not prevail. Pakistan did not agree. Later on, Pakistan obtained military help from U. S. A. and armed herself to teeth, which changed the entire situation and led to a declaration by the Prime Minister of India that plebiscite was no longer a solution of the problem of Kashmir. The accession of the State to India was declared as final.

The Constitution of India was applied to the State of Jammu and Kashmir by the Constitution (Applicable to Jammu and Kashmir) Order, 1954 (C. O. 48 dated, the 14th May, 1954) with certain exceptions and modifications.

III. Problem of democratization of the States : Apart from the issues of Integration and Accession, there was an equally serious, though collateral, problem of introducing democratic or representative institutions in the States. When Paramountcy lapsed over the States on August 15, 1947, these States were on the whole, autocracies, with a semblance of representative institutions here and there. It was realized early that democratic institutions must be started in the States to weld them harmoniously with the British India. When the Federal Part of the Act of 1935 was under examination, the Congress leaders saw no chance of a fruitful co-operation with the States, so long as they retained the autocratic character of their administrations. The Princes, on the whole, were not interested in introducing democratic institutions in the States, for the simple reason that this would have ended their personal power. The British Government was also not interested in such a development because they preferred to keep the States as pockets of British influence and reactionary strong holds to checkmate progressive forces in the British India. Whenever national or progressive forces raised their heads in the States and the people of the States demanded responsible institutions, they were victimized and ruthlessly suppressed by the Princes, sometimes even with the active help of the British Government under the usual pretence of preserving law and order.

Before 1920, the Congress did not take any real interest in the progressive movements in the States. Since then, the Congress gave full support to the progressive elements in the States, even at the risk of displeasing the Princes. In 1934, Dr. Rajendra Prasad, in his Presidential address to the Congress, assured the people of the Indian States full sympathy and support of the Congress in their legitimate and peaceful struggle for the attainment of responsible governments in the States. In 1938, the Congress declared that it stood for the freedom of States as an integral part of India as a whole. The All-India States Peoples' Congress was organised in the States in 1936, and its goal was stated to be the attainment of responsible governments in the States under the aegis of the Princes.

The Congress leaders often presided over these Conferences, which helped a good deal in spreading political consciousness in the States.

In the Civil Disobedience Movements, the people of the States took an active part. In the Cabinet Mission Plan, an assurance was given that in the Constituent Assembly, the people of the States would be given representation. This was an admission, even on the part of British Government that the time had arrived when the people of the States should also be given a hand in deciding their political destinies. The Negotiating Committee which was nominated by the Chamber of Princes under the Cabinet Mission Plan agreed with the representatives of the British India that 50% of the seats in the Constituent Assembly meant for the States would go to the elected representatives of the people of the States. When the States were declared free on 15th August, 1947, autocracy was still the usual form of government in them. In some of the States like Travancore and Mysore representative institutions were already working, but most of the remaining big States, e. g., Hyderabad, Baroda, Kashmir, Gwalior, Indore, Bikaner, Patiala and Bhopal were run very largely by Executive Councils, appointed by the Princes.

With the accession of the States to the Indian Union, which was almost complete by 15th August, 1947, the democratization of the States became a responsibility of the Government of India. As already stated, some of the States merged in the democratic Indian Provinces. Those States which formed themselves into Unions like Saurashtra, Madhya Bharat, Rajasthan, etc., were given a political status almost similar to that of the former British Indian Provinces. The Rajpramukhs and Up Rajpramukhs were given merely constitutional headships like the Governors of the Provinces. Fully elected Legislative Assemblies were provided and parliamentary form of government was introduced. For the first 10 years after the introduction of the Constitution, the Government of India was made responsible for the good government of the States in Part B in order to ensure healthy administration and political growth on right lines. As most of these were new to the democratic process, this temporary tutelage of the Central Government was considered necessary. All these Unions, including Hyderabad, Kashmir and Mysore were placed in Part B States. The administration of Part C States was made directly the responsibility of the Government of India, which appointed Chief Commissioners in these States as the chief administrators, who were responsible to the Government of India. Some of these States had been very backward politically. The Government of India did its best to increase the pace of democratization in these States. In Delhi and Himachal Pradesh, which were Part C States, fully elected Legislative Assemblies were set up and worked with responsible governments of the Cabinet type as in Part A or Part B States.

Causes of these revolutionary changes : The three-fold progress of integration, accession and democratization in the States, as described above, was rightly regarded as truly revolutionary. It was often described as the greatest achievement of free India. The 400 and odd States were consolidated into about a dozen administrative Units. All the States acceded to the Indian Union. Excepting the Part C States and a few limitations on Part B States, all the remaining States had fully democratic governments. The Rulers of the States became constitutional heads. All these were tremendous changes and were wrought in a short span of one or two years. This phenomenal success was achieved in a peaceful manner, except in Hyderabad where the use of violence became necessary in the interests of the people of the State and India as a whole. The world does not present a single parallel to such a vast change, over such a big area and in such a peaceful manner. It would be interesting to assess some of the causes which had made these changes possible.

(1) The biggest individual factor in this spectacular drama was, probably, the personality of Sardar Patel. The achievements in the States were attributed to his astute statesmanship, intense patriotism and great administrative skill. He was the chief actor in this drama. He handled the Princes with great patience, tact and sympathy. He proceeded with the task with a clear-cut aim and a grim resolve. He was certainly conscious of his strength which was the strength of the people of India who were with him and for whom he worked. He was a man of iron will. Rightly, the achievement in the States was regarded as the greatest contribution of Sardar Patel to the progress of India.

(2) The National Movement which developed in the British Indian Provinces from the eighties of the 19th century could not but fail to affect the people of the States. Because of their free social intercourse with the people of the British India, the people of the States had also become politically conscious. After 1920, the Congress openly sympathised and later helped the progressive forces in the States. The people of the States had become conscious of their political rights. Political consciousness in the States and their national movements as canalized in All-India States Peoples' Conferences also helped in this development. When Sardar Patel negotiated with the Princes, he was quite conscious of the fact that the people of the States were with him.

(3) All [these changes would have been impossible, if the British had not surrendered power over the British India and the States. In the past, the Princes were able to defy the wishes of their people and could refuse the grant of political rights because the British Government supported them in their stand. After 14th August 1947, the Princes were left to their own fate. The mischievous hand of the British was no longer there. The weight

of Lord Mounbatten and the Labour Party in England, which remained in power all these days was definitely on the side of progress in the States.

(4) Some of the Princes showed a remarkable foresight and appreciation of the issue involved. Some of them were certainly patriotic and progressive. In surrendering their power gracefully, some of the Princes showed that they correctly read the lesson of the times. Sardar Patel recorded, "the ready and willing help which the rulers have given me in implementing the policy of integration and democratization. This involved on their part considerable sacrifice and self-denial. For all this I am most grateful. By their act of self-abnegation, these rulers have purchased in perpetuity the right to claim the devotion of their people."

In the above pages, the changes made in the territories of the former Indian States up to the commencement of the Constitution have been described. With the coming into force of the Constitution (Seventh Amendment) Act, 1956 from the 1st of November, 1956, the institution of the Rajpramukhs was abolished and no distinction, whatsoever, is, thereafter, made in the administration of the former Provinces and the territories of the former States. The process of integration and democratisation was thus completed on November 1, 1956 !

CHAPTER XLII

FINANCIAL DEVOLUTION

Before 1870, the Government of India exercised full control over the monetary system of India. There was a complete centralization. The revenue collected from all parts of India was credited to the treasury of the Government of India and all expenditure was incurred from it on the authority of the Central Government. The Provinces were treated as mere agent of the Government of India in matters of the collection of revenue and expenditure. Money was distributed among the Provinces, not in proportion to the revenue raised in them, but according to their needs. The sources of taxation, the amount of taxation, the manner of collection and the authority for expenditure were all dictated by the Government of India.

About this system, Sir John Strachey once said, "If it became necessary to spend £ 20 on a road between two local markets or to rebuild a stable that had tumbled down or to entertain a menial servant on wages of 10 Shilling a month, the matter had to be formally reported for the orders of the Government of India. No central authority could possibly possess the knowledge or find time for the efficient performance of such functions throughout so vast a tract of country ; the result was complete absence of real financial control, frequent wrangling between the Supreme and Provincial Governments and interference by the former, not only in financial but in administrative details, with which the local authorities alone were competent to deal. The distribution of public income degenerated into something like a scramble, in which the most violent had the advantage with very little attention to reason. As local economy brought no local advantage, the stimulus to avoid waste was reduced to a minimum, and as no local growth of the income led to local means of improvement, the interest in developing the public revenues was also brought down to the lowest level."

Mayo's reforms : Lord Mayo's Government, for the first time in 1870, had the credit of making the Provincial Governments somewhat responsible for the management of their local finances. Nine heads of expenditure, viz., jails, education, police, registration, printing, roads, medical services, civil buildings and miscellaneous public improvements were selected as primarily of Provincial interest. The expenditure on the corresponding Departments was to be met, partly by revenue out of these heads and partly by fixed

Imperial grants made by the Government of India. The Provincial Governments were given complete control to allocate money among these Departments as seemed best to them, and also to provide for additional expenditure by exercising economy and, if necessary, by raising local taxes. The results of this change were encouraging. The Provinces became more careful and economical in expenditure. Better feeling resulted between the Central and the Provincial Governments. The experiment set the Provinces on the road to shouldering responsibility for their own administrations, though in a very humble manner.

In 1877, Lord Lytton's Government extended this system. Several new heads of expenditure like land revenue, excise, law and justice, and stamps were transferred to the Provinces. In order to meet the additional expenditure, more heads of revenue were also provincialized. This was done primarily to encourage the Provinces to take a keener interest in the collection of their revenues.

Ripon's Reforms : Further changes in the system were made by Lord Ripon's Government in 1881, when the system of grants from the Central Government to the Provinces was abolished. Three heads of revenue were created—Indian, Provincial and Divided. Land Revenue was kept in the Indian List, and each Province was given a percentage of the land revenue raised within its territories because the revenue from the remaining Provincial heads was not sufficient to meet Provincial requirements. The Settlement fixing the respective share of the Provinces in the land revenue was made on a five-yearly basis.

The periodic nature of the Settlement often resulted to the detriment of the Provinces. The Supreme Government was often forced by financial needs to resume to itself balances standing to the credit of the Provinces when a Settlement expired. The Government of India could alter the Settlement in its own favour, when a Province showed a surplus. To meet this objection, in 1904 Lord Curzon made the Settlement *quasi-permanent*, i.e., not subject to alteration by the Central Government except in case of a grave economic necessity. This step gave greater confidence to the Provinces in raising their revenues and making expenditure. Provincial Governments were able to reap the benefit of their own economies without being hurried into ill-considered proposals in order to show more expenditure. The relations with the Provincial Governments were no longer embittered by periodic Settlements.

In 1909, the Decentralization Commission examined the whole question of the financial relation of the Central and Provincial Governments, and expressed general satisfaction with the system. The Commission proposed no radical change; but in 1912 Lord Hardinge's Government took the logical final step for the development of this system and made the Settlements *permanent*.

The fixed grants were reduced and the Provincial share of growing revenues was increased. A minor, but important, benefit was conferred on the Provinces by curtailing the intervention of the Government of India in the preparation of the Provincial budgets.

Position before Montford Reforms : The financial relations of the Central Government with the Provinces before the Montford Reforms may be summarised as follows :

(i) Subjects were divided into three categories—Central, Provincial and Divided. Matters of all-India importance like defence, foreign affairs, post and telegraph and railways were placed under the Central List. Revenue from and expenditure on them was exclusively controlled by the Government of India. Subjects of Provincial interest like jails, police, education and medical relief were placed in the Provincial List, and were entirely under the control of the Provinces. The Government of India exercised only general supervision when matters apparently went wrong. Subjects like land-revenue, stamps, excise, forest and irrigation were declared as Divided heads and the financial control over these was shared by the Government of India and the Provincial Governments. The control of the Central Government over the Divided heads was rather rigid because the revenue raised on these heads as well as the expenditure was shared by the Central Government with the Provinces. The respective shares were fixed after prolonged deliberations.

(ii) The Government of India retained complete control over all taxes imposed in British India, apart from local rates. All proposals for taxation from the Provinces were sent for the sanction of the Government of India and were thus scrutinised by the Finance Department to ensure that the proposals did not interfere in any manner with the Central Government's sources of taxation. This procedure, in practice, considerably curtailed the power of the Provinces to levy new taxes.

(iii) The Provincial budgets were required to be submitted to the Government of India for approval before they could be finally sanctioned by the Provincial authorities.

(iv) The power of borrowing was not given to the Provinces. The Provincial Governments could not borrow money on the security of their resources in open money market. This was done on the plea that as the money market in India was limited and sensitive, it was advisable to control the total borrowings of India by one agency, if rates were not to be forced up and the market dislocated by indiscreet ventures.

(v) Varying degree of control by the Government of India over the Provincial finances was exercised through a series of Codes such as the Civil Service Regulations, the Civil Accounts

Code, the Public Works Code and the like. These Codes restricted the power of the Provincial Government to make new appointments or to raise emoluments.

The Montford Report found most of these limitations and restrictions irksome and hindrances in the way of taking the Provinces towards the goal of responsible Governments. The Montford Report considered it imperative to secure to the Provinces entirely separate revenue resources and to enlarge their power over Provincial taxation and borrowings, if meaning and substance were to be given to the policy announced in the Declaration of 1917. It is necessary to emphasize that before the Montford Reforms, the Government of India remained legally supreme in matter of finance with regard to the whole of India. Whatever power was enjoyed by the Provinces was in the nature of a grant or delegation of power from the Central Government. It was done as a matter of administrative convenience only and in the interest of division of work. Powers were delegated to Provinces by Rules framed by the Government of India, which the latter could alter or change at any time. In other words, relaxation was not made under any statutory authority and had no binding force for the Government of India. In short, the Provinces were mere agents of the Central Government in financial matters.

Financial relations under the Act of 1919 : After the introduction of the Act of 1919, following steps were taken to effect the relaxation of the control of the Central Government over the Provinces in financial matters :—

(i) The Provincial budgets were entirely separated from the Central budget. Almost complete freedom was given to the Provinces in the preparation of their budgets.

(ii) The Central and the Provincial subjects were entirely separated. Some were classed as purely Central and the others as purely Provincial. The income from and the expenditure on the Central subjects was entirely controlled by the Government of India, and on the Provincial subjects, by the Provinces. The Provincial subjects were further sub-divided into the Reserved and Transferred subjects. The Government of India exercised rigid control over the Reserved subjects. The control over the Transferred subjects was mostly passed on to the popular Ministers.

(iii) The Provinces were granted definite sources of revenue or income, some of which were : (a) balances to their credit at the time when the Act of 1919 was enforced ; (b) receipts from Provincial subjects ; (c) a share in the growth of revenue from income-tax in the Province so far as the increase was due to an increase in the amount of income assessed ; (d) loans and advances made by the Provincial Governments to the Government of India and interest thereon ; (e) proceeds of taxes imposed by the Province ; and (f) proceeds of loans. This improved the revenue position of the Provinces a good deal.

(iv) For the first time, the Provinces were given the power of levying some taxes of strictly Provincial or local nature, the imposition of which in no way affected the sources, which the Government of India wanted to tap. A Provincial Council could impose some taxes without the previous sanction of the Governor-General-in-Council, e. g., on land put to uses other than agriculture, succession, any form of betting or gambling permitted by law, amusements, registration fee and advertisements. Previous sanction was no longer required to impose local taxes by the Local Bodies. For the Levying of all other taxes, it was necessary to obtain the previous permission of the Governor-General-in-Council.

(v) The Devolution Rules provided that a Province could borrow or raise loans on the security of revenues allotted to it, in order to meet some capital expenditure in constructing projects of lasting public utility, if the same cannot be met from the current resources. The Provincial Government could also borrow for expenditure on irrigation works, financial relief, etc. For the purposes of raising any loan in India, the sanction of the Governor-General was required and for the purposes of raising loan in a foreign country, the previous permission of the Secretary of State-in-Council was necessary. These higher authorities, while according sanction, could lay down conditions regarding the amount of loan, the rate of interest and the mode of payment. A Provincial Government could also receive loan from the Central Government on which interest was payable.

(vi) As most of the lucrative heads of revenue were made over to the Provinces, the Government of India was not left with adequate resources to meet its expenditure. A special Committee under the chairmanship of Lord Meston was appointed to go into this question. The Meston Award laid down yearly contributions, which were to be made by the various Provinces to the Central Exchequer. These contributions could not but be fixed in a rough and ready method. It was impossible to devise any perfectly just and equitable basis for fixing them. Hence most of the Provinces resented these contributions and continued to protest against them again and again to the Government of India, which led to their abolition in 1927-28.

Montford Raforms thus took a definite step in giving the Provinces some real autonomy in the matter of finances. No doubt, the whole arrangement was based on the Devolution Rules which were made by the Government of India and approved by the British Parliament. These very authorities could change them at any time. The new arrangement was not incorporated in the Act of 1919 and hence was not given a statutory or legal basis. But it certainly, in practice, endowed the Provinces, with somewhat autonomous character and paved the way for the federal and legal character that was given to the financial rights of the Provinces under the Act

of 1935. Henceforward, the Government of India interfered very little in Provincial finances ; particularly on the Transferred side. The Provinces learnt, by practice, their first lessons in the art of Provincial economy and self-government.

The financial arrangement under Montford Reforms had its own defects. It gave Provinces sources of revenue which were mostly inelastic and unpopular. Most of the spending and nation-building Departments like education, public health and public works were under the charge of popular Ministers. More and more money was needed in the Provinces for the growth and development of these Departments, which was not forthcoming to the Ministers. The needs of the Transferred subjects were often overlooked as against those of the Reserved subjects because the Government of India considered itself responsible for the efficient administration of the latter even after the Reforms.

Financial relations under the Act of 1935 : Under the Act of 1935, Provincial Autonomy was introduced in the Provinces from 1st April, 1937. All the Provincial Ministers were now made removable by the Legislature. They were given a distinct sphere of work. But democracy is a costly affair. Its worth is recognized, by the amount of benefit it confers on the people and the general welfare it is able to achieve. All this requires money. Under the Act of 1935, the Provinces were treated on a Federal basis and their autonomous existence was legally recognised. Necessity was, therefore, felt to make each Province, at least, solvent in meeting its financial needs. A very detailed arrangement was made under the Act to separate the Federal and the Provincial sources of revenue. To work out and make detailed recommendations, the Government appointed a Committee in 1936 with Sir Otto Niemeyer, as its chairman. The report of the Niemeyer Committee was published in 1936 and all its suggestions were accepted by the Government and were embodied in a separate Order-in-Council, which also came into force along with the Act. The following were the main features of the relationship as a whole :

(1) Under the Act of 1935, there was a Federal List of subjects on which the Federal Legislature alone was competent to make laws. All income from these subjects belonged to the Federation. Similarly all revenue from the Provincial subjects was taken up by the Provinces. The most important Federal sources of income were : custom duties, excise duties, corporation tax, salt tax, taxes on income other than agriculture, succession duties except on agricultural land, taxes on capital, stamp duties, terminal taxes on goods or passengers carried by railway and air and taxes on railway freights and fares. The most important Provincial sources of income were : land revenue, taxes on land and buildings, succession duty on agricultural land, irrigation charges, registration fee,

court-fees and stamps, forests, advertisements, entertainments and taxes on vehicles.

Apart from these separate sources, the Provinces were given the following additional sources of income :—

(a) Duties in respect of succession to property other than agricultural land ; stamp duties on some subjects included in the Federal List like bills of exchange, cheques, promissory notes, etc. ; terminal taxes on goods or passengers carried by railway or air and taxes on railway fares and freights were levied and collected by the Federation. But their net proceeds were to be distributed among the Provinces as prescribed by an Act of the Federal Legislature. The Federal Legislature could impose and retain the proceeds of a surcharge levied on these duties for the Federal purposes.

(b) Income Tax was to be levied and collected by the Federation. But a certain percentage of its net proceeds was to be assigned to the Provinces. On Sir Otto Niemeyer's recommendations, the share of the Provinces was fixed as 50% of the net proceeds, and was distributed in different proportion amongst the various Provinces.

(c) Salt duties, federal excise duties and export duties were to be levied and collected by the Federation, but the whole or a part of the proceeds was to be distributed to the Provinces. Similarly, export duty on jute was to be assigned to the Provinces exporting jute in certain proportion. On the recommendation of the Niemeyer Committee, 62½% of the net proceeds of the jute export duty was to be assigned to the Provinces sending the jute. Bengal, Assam, Bihar and Orissa gained by this concession.

(d) Under a federal set up, it is very necessary that every Province should be able to meet its legitimate expenses. Sir Niemeyer realised that some Provinces were bound to remain deficit Provinces because their resources were meagre. On the other hand, there were some Provinces like N. W. F. P., which because of their strategic military importance had to incur expenditure, which was of an all-India nature. Hence in all these cases, where need for assistance was felt, it was recommended that the Governments should make grants-in-aid. These were fixed on the recommendation of the Niemeyer Report. Steps were recommended to diminish and stop these subventions gradually.

(ii) The Provinces were given the power to raise loan on the security of their resources. The conditions of the loan were to be fixed by an Act of Provincial Legislature. A Province could not borrow money outside India without the consent of the Federal Government. The Federation could also make loans to the Province and could guarantee the repayment of their loans to creditors.

FINANCIAL RELATIONS UNDER THE PRESENT CONSTITUTION

Financial relations of the Union and the States under the present Constitution follow mostly the lines adopted by the Government of India Act, 1935 and the Niemeyer Award. Some are purely Union sources of revenue, others are purely State sources, some are divided between the Union and the States and yet others which are levied and collected by the Union, but are wholly allotted to the States.

Distribution of resources : Taxes and duties which only the Union is authorised to levy are : taxes on income other than agricultural income ; custom duties including export duties ; excise duties on tobacco and other goods manufactured or produced in India except on alcoholic liquors for human consumption and opium ; corporation tax ; taxes on the capital value of assets ; estate duty in respect of property other than agricultural land ; duties in respect of succession to property other than agricultural land ; terminal taxes on goods or passenger carried by railway, sea or air ; taxes on railway fares and freights ; taxes other than stamp duties on transactions in stock exchanges and future markets ; rates of stamp duties in respect of bills of exchange, cheques, promissory notes, etc. and taxes on the sale or purchase of newspapers and on advertisements published therein. Proceeds from these taxes are to be utilized by the Union, except when otherwise provided in the Constitution, as explained below.

Taxes and duties which only the States are authorized to levy are : land revenue ; taxes on agricultural income ; duties in respect of succession to agricultural land ; estate duty in respect of agricultural land ; taxes on lands and buildings ; taxes on mineral rights ; excise duties on alcoholic liquors for human consumption, opium, etc. manufactured or produced in the State ; taxes on the entry of goods into a local area ; taxes on the consumption or sales of electricity ; taxes on the sale or purchase of goods other than newspapers ; taxes on advertisements other than those published in newspapers ; taxes on goods and passengers carried by road or on inland waterways ; taxes on vehicles ; taxes on animals and boats ; tolls ; taxes on professions, trades, callings and employments ; capitation taxes ; taxes on luxuries including taxes on entertainments, amusements, betting and gambling ; rates of stamp duties in respect of documents other than those which are subject to a Union tax. Revenue received from these taxes is to be wholly utilized by the States.

As the above sources of revenue were not considered adequate for meeting the financial needs of the States, additional sources of income have been provided to them, which fall under the following categories :—

Firstly, there are some taxes which are levied by the Union, but are collected and wholly retained by the States. In this category fall all those stamp duties and excise duties on medical and toilet preparations which are mentioned in the Union List.

Secondly, there are some taxes, which are levied as well as collected by the Union, but are wholly assigned to the States. To this class belong : duties in respect of succession to property other than agricultural land; estate duty in respect of property other than agricultural land ; terminal taxes on goods or passengers carried by railway, sea or air ; taxes on railway fares and freights ; taxes other than stamp duties on transactions in stock exchanges and future markets; and taxes on the sale and purchase of newspapers and on advertisements published therein. It may, however, be noted that only the net proceeds found out after deducting expenses from the gross income are to be distributed to the States. The principle of such distribution is to be regulated by a law of the Parliament.

Thirdly, there are some taxes which are levied as well as collected by the Union ; but net proceeds thereof are distributed between the Union and the States. The share of the States is to be prescribed by an order of the President, and when a Finance Commission has been constituted by him only after taking into consideration the recommendations of the Commission. To this category belong taxes on income, other than agricultural income. The Parliament by law may include, in this class, excise duties other than those on medicinal and toilet preparations. The amount of net proceeds in all such cases is to be determined by the Auditor-General of India, whose decision shall be final.

And fourthly, the States of Assam, Bihar, Orissa and West Bengal will get a share of the net proceeds of export duty on jute and jute products, so long as such duty is levied by the Government of India or until the expiry of ten years after the commencement of the Constitution, whichever is earlier.

The Parliament may levy a surcharge on taxes mentioned under the second and the third categories of taxes ; which will wholly belong to the Union.

Grants-in-aid : The Parliament may by law provide grants-in-aid to be paid by the Union to such States, as are in special need of assistance. The amount of grant may be different for different States. These grants may be for various purposes. Firstly, these may be for compensating a Province in lieu of taxes and duties, which are levied and collected by the Union, but are really due to them. Assam, Bihar, Orissa, and West Bengal are jute-producing States. The export duty on jute and jute products is levied and collected by the Union. Hence provision is made that the Union shall pay to these States grants-in-aid to compensate them for the export duty on jute and jute products. According to the Deshmukh Award

of 1949, these grants were fixed as : West Bengal, 105 lakhs of rupees per year ; Assam, 40 lakhs ; Bihar, 35 lakhs and Orissa, 5 lakhs. Secondly, grant is obligatory to be paid to enable a State to meet the cost of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purposes of promoting the welfare of the Scheduled Tribes in the State or for raising the level of administration of the Scheduled Areas in that State to the level of the rest of that State. Thirdly, it is obligatory that grant-in-aid must be paid to Assam to compensate for the administration of Tribal Areas especially entrusted to that State. Furthermore, Assam must be compensated for such schemes of development as may be undertaken by that State with the approval of Government of India for the purposes of raising the level of administration of these Areas. And lastly, the Parliament possesses the general power of giving grants-in-aid to any State or States, which the Parliament thinks to be in need of special financial assistance. Such grants are entirely optional in character.

It may be noted that the grants mentioned in the first three categories are obligatory, whereas the fourth one is entirely optional. The amount of such grants is to be fixed by the Parliament. Till a law on the subject is made by the Parliament, the President is authorised to fix the grants by an executive order.

After Independence, the share of income-tax to be allotted to the Union and the States was fixed *ad hoc* by Mr. C. D. Deshmukh. The present distribution is based on the recommendations of the Finance Commission.

Power of borrowing : The Government of the Union possesses full power of borrowing upon the security of the Consolidated Fund of India, subject to conditions laid down by the Parliament. The Governments of the States also possess the power of raising loans upon the security of their own Consolidated Funds subject to conditions laid down by the Legislatures of the States. The States can borrow only within the territory of India. The Government of India may grant loans to any State, provided the limit fixed by its Legislature is not exceeded. It may also give its own guarantee to the creditors in respect of any loan raised by the State. No State can raise a loan without the consent of the Government of India, so long as there is still outstanding any part of a loan which was made to that State by the Government of India or in respect of which a guarantee has been given by the Government of India to the creditors on behalf of that State for its repayment. While giving consent to any State for raising a loan, when such a consent is obligatory, the Government of India may impose conditions which it may think proper.

Finance Commission : The Constitution provides that a Finance Commission shall be appointed within two years from the

commencement of the Constitution, and thereafter, at the expiry of every fifth year or at such earlier time as the President considers necessary. It shall consist of a Chairman and four other members to be appointed by the President. The qualifications of the members for appointment and the manner of their selection may be laid down by the Parliament. The Commission shall lay down its own procedure for work. It shall have such powers in the performance of its functions, as may be laid down by the Parliament.

The Commission shall perform the following functions :

(a) It shall recommend to the President the distribution between the Union and the States of the net proceeds of taxes and also the allocation between the States of their respective shares of such proceeds ; (b) it shall lay down the principles which should govern the grants-in-aid to be made to the States ; (c) it shall make recommendations regarding the advisability of the continuance or modification of the agreements entered into by the Government of India with States in part B ; and (d) to give opinion on any other matter referred to the Commission by the President in the interests of sound finance.

The President must place the recommendations of the Commission, together with a statement of the action he proposes to take on them, before each House of the Parliament. It may also be noted that the President is not bound to follow the advice of the Commission, but after a Commission has been appointed, the President cannot take action on matters within the jurisdiction of the Commission without taking into consideration the recommendations of that body.

Financial relations of Union and States in an Emergency : The effects of the three types of emergencies on the relations of the Union with the States have been discussed elsewhere. A Declaration of Emergency will have the effect of transforming the federal character of the Union, and make it almost unitary. During a financial emergency, the Union Government may give any financial directions to the State authorities, salaries of the State officials including that of the High Court Judges may be reduced and all money bills passed by the States may be required to be reserved for the approval of the President.

A critical estimate : The financial position of the States is not strong. They have to undertake nation-building activities like education, public health, labour welfare, local self-government, refugee relief and rehabilitation, etc., which require ever-increasing expenditure. But their sources of revenue are uncertain and may even dwindle. Prohibition movement is bound to affect adversely the excise duties. Popular opinion has for long demanded reduction of land revenue. Zamindari abolition will wipe out taxes on

agricultural incomes and succession duties on agricultural property. It is doubtful, if the States will be successful in carrying out development programmes, unless and until a constant flow of money from the Union is assured. Secondly, even the power of borrowing of the States is subject to many restrictions, which can be imposed by the Union. Thirdly, an ideal system of finances in a federation is to give the Centre and the States absolutely separate sources of revenue. But this was not possible, partly because of the traditions in the immediate past and partly because no such clear-cut division could be made, which would provide shares to the Union as well as to the States just equal to their respective needs. Hence divided heads have been retained to enable adjustments to be made periodically to increase the share of the Union or the States from time to time, as demanded by the exigencies of the times. Wherever a tax is to be divided, it is entirely for the Union authorities to decide the principles of such distribution. This is in line with the general spirit of the Constitution, viz., to give the Centre a controlling hand as far as possible. The system of grants-in-aid and unilateral manner in which their amount is to be decided by the Centre is not very pleasant for the States; but given a sympathetic Centre; it would be a fruitful source of help for tiding over difficulties in the States. The fundamental principle followed in the whole arrangement is to make the financial position of the Union sound and independent, leaving it for the Union to help the States wherever and whenever necessary.

In view of the relatively weak position of the States in the matter of financial resources, Prof. Srinivasan recommends: (i) "in as much as famines and natural calamities frequently unbalance the budgets of the States expenditure to meet famines and natural calamities must be completely borne by the Union Government; (ii) "greater part of the development expenditure in the more backward and financially weaker States of the Union must be made a federal charge"; (iii) "since the finances of the States are dependent almost completely on the prosperity of agriculture, the Union Government must assure the stability of agricultural prices"; and (iv) "the transfer of resources from the Centre to the States must be effected in large measures through the devolution of revenues. Grants-in-aid should in general be used only to redress maladjustments and inequalities."¹

The greatest merit of the whole arrangement is its flexibility and adaptability. It can conveniently be tilted, one way or the other, to meet the special needs of the Union or the States. Professor Wheare writes, "There is and can be no final solution to the problem of the allocation of financial resources in a federal system. There can only be adjustments and reallocations in the

1. Prof. Srinivasan : *Democratic Government in India*, pp. 348-9.

light of changing conditions. What a federal government needs, therefore, is a machinery necessary to make such adjustments and to make them also in such a way that the financial independence of the general and regional governments is preserved as far as possible."¹ This is exactly what the present financial arrangement attempts to achieve.

1. Quoted by Prof. Srinivasan : *Democratic Government in India*, p. 350.

CHAPTER XLIII

DEVELOPMENT OF PUBLIC SERVICES

The success of a government very much depends upon the integrity and efficiency of its Public Services. In a parliamentary government, the policy of the Government is laid down by the Cabinet. It is the duty of the Services to execute or implement that policy. It is also a function of the Services as experts, to advise the Ministers at the time of framing the policy, but the responsibility for the rightness or wrongness of the policy is entirely that of the Ministers. The Minister has not only to lay down policy, but he is also to see that the policy is properly executed by the Services. For this purpose, the Ministers are placed at the head of the Departments and are endowed with the power of taking disciplinary action against the Services. As a matter of principle, a Minister should not interfere in the details of the administration, which should be left to be decided by the Services.

The object is to develop the Service-men as experts or specialists. This is done by a long process of training of the Service personnel. As a rule, the Service-men should be recruited through open competitive examinations conducted by independent Public Service Commissions to ensure appointments by merit. They should be appointed on a permanent basis to assure for them a security of tenure. The Services personnel should be appointed during good behaviour, i.e., they should not be removable unless neglect of duty is proved against them, after giving an adequate opportunity to the man concerned to explain his conduct before an impartial tribunal. Services should be paid adequate salaries, so that they should be free from the temptation of accepting bribe. Adequate pension or gratuity should be granted to them after retirement, so that they should be free from the temptation of gathering money by questionable means to provide for life after retirement. In a democracy, the Services must be neutral in politics. Whichever the party in power, the Services should faithfully implement its policy. For this, it is necessary that the personnel of the services should be forbidden to take part in active politics.

Special role played by Services : During the British Rule, the Services in India like the Indian Civil Service played a special role in the administration. As stated above, the ordinary duty of the Services is to implement the policy of the Ministers. But the position of the Superior Services in India was somewhat different. Most of them were Europeans and belonged to the ruling class. Some

of them were later elevated to the highest posts in India like the membership of the Executive Council of the Governor-General and even Governorships, in which capacity they were called upon to lay down policies for the administration of India. Every European member of the Superior Service often regarded himself as a custodian of the British Imperial interests in India and a co-sharer in the task of framing policies which were to govern this country. Thus the Superior Services were accustomed to play the role, not merely of administrators, but also that of the policy makers. This is why the European personnel of the Services found a great difficulty in adjusting themselves to changed circumstances, when responsible government was introduced in the Provinces under the Act of 1919 and 1935 and the Service-men were called upon to work as mere executors of the policy. The Montford Report testifies that the Indian Civil Service "has been in effect much more of a Government Corporation, than of a purely Civil Service in the English sense." They were once described as the 'steel-frame' of the British administration in India.

Organization of Services before Government of India Act, 1919 : Before the Act of 1919, the Services were divided into All-India Services, Defence Services, Central Services, Provincial Services and Subordinate Services. The All-India Services were also called Imperial Services. These Services belonged to almost all important Departments like Public Works, Agriculture, Education and Police, etc. The most important of these Services was the Indian Civil Service. The members of these Services were appointed and controlled by the Secretary of State-in-Council and were posted to various Provinces in key posts and as the Heads of the Government Departments. Similarly, the Defence Services were also controlled by the Secretary of State. The Indian Civil Service and the Defence Services were mostly filled by Europeans. The Central Services, e.g., the Indian Railway Service, the Indian Customs Service and the Indian Audit and Account Service, were directly under the Government of India. Their incumbents were appointed and controlled by the Governor-General-in-Council. The Provincial Services were recruited and regulated by the Provincial Governments. Their Service Rules, though framed by the Provincial Government, required approval of the Government of India. Below them were appointed members of the Provincial Services, who were mainly Indians. The Subordinate Services filled still minor jobs and were appointed by the respective Heads of the Departments, according to Rules requiring approval of the Provincial Government. This is, in broad outlines, the framework of the Services as it existed before the Act of 1919.

Rights and privileges of the Services under the Act of 1919 : When the act of 1919 was being hammered into shape, the European members of the All-India Services began to entertain anxiety regarding the security of their tenure and position under

responsible Ministers. In order to remove their fears, statutory provisions were made in the Act of 1919 to ensure many rights and privileges for the Services, and to strengthen their position against the responsible Ministers. Some of these rights and privileges are stated below :—

(i) The Services were to hold office during his Majesty's pleasure, and no body could be dismissed by an authority, subordinate to the one that appointed him. Every case of punishment was to be preceded by a properly recorded Departmental Enquiry, which was to afford adequate opportunities of self-defence to the man proceeded against. These provisions applied to all the Services.

(ii) A member of the Imperial Services, in case he felt aggrieved by the orders of a Provincial authority, was given the right to approach the Governor, who was required to examine the complaint. Under the Instrument of Instructions to the Governors it was the duty of the Governor to protect the legitimate rights of the Services. No adverse order against a member of the Superior Services could be passed, except with the concurrence of the Governor.

(iii) The Imperial Services were further given the right to make an appeal to the Secretary of State against all such adverse orders. Such appeals were decided according to the opinion of the majority of the members of the Council of the Secretary of State. Most of these Councillors were ex-Service-men from India. Thus the final disposal of such appeal was in the hands of ex-Service-men, from whom sympathetic consideration could naturally be expected by the services.

(iv) The salaries and allowances of the Imperial Services were treated as non-votable items of the Central and Provincial budgets. Thus the Indian Legislatures had no power to reduce or refuse the expenditure incurred on them.

(v) It was provided that every person appointed by the Secretary of State-in-Council, shall retain all his existing rights and shall receive such compensation for the loss of any of them, as the Secretary of State-in-Council may consider just and equitable.

(vi) A provision was made for the payment of a proportionate pension to an All-India Service Officer, in accordance with the length of the service, if he desired to retire before the completion of his normal period of Service, on account of his dis-satisfaction with the new conditions. This provision was inserted because it was felt that some European Officers belonging to the All-India Services, might not like to serve under the Indian Ministers.

(vii) The Secretaries of the Departments had direct access to the Governor ; and whenever there was a difference of opinion

between a Minister and a Secretary, the case had to be referred to the Governor for a decision.

The Muddiman Committee on the working of the Services under Dyarchy (1924): The majority of the Committee which consisted of Europeans and Government officials came to the conclusion that the Superior Services had loyally co-operated with the popular Ministers in carrying on the administration. The minority of the members who were Indians and included Sir Tej Bahadur Sapru and Mr. M. A. Jinnah reported that there were frequent frictions, quarrels and cases of ill-feeling between the popular Ministers and the Superior Services. They quoted a despatch of the U. P. Government, wherein it was stated that the entire outlook of the Services had changed after the introduction of the Reforms. They were no longer taking personal interest in the work because they resented taking orders from the Indian Ministers. The Minority Report recorded, "Under the present conditions, the Ministers feel that the Services can look to higher powers for the enforcement of their views in cases of differences, which tends to undermine the Minister's authority." In their opinion, the appointment and control by the Secretary of State was inconsistent with the spirit of the Reforms. It made the position of the Minister awkward. He was called upon to get his policies executed by persons over whom he had no disciplinary control. One of the main reasons for the failure of Dyarchy was that the Superior Services did not give willing co-operation to the popular Ministers. The Ministers could not exact work from them because they could not take any action against them.

Lee Commission : We have already noted that the Superior Services were anxious about their fate after the Reforms. By 1924 the number of those who sought premature retirement swelled to 345, which became a cause for great anxiety on the part of the Government. On the other hand, Indians were not at all satisfied with the speed of Indianization of the Superior Services. Keeping both these considerations in view, the Government appointed a Commission in 1923 to report on the conditions of Services in India, with Lord Lee as its Chairman. Some of the important recommendations made by the Lee Commission were as follows :—

(i) The Commission recommended that All-India Services working under the Reserved Departments in the Provinces should continue to be recruited and controlled by Secretary of State-in-Council; but as far as the All-India Services working on the Transferred side were concerned, further recruitment to them by the Secretary of State-in-Council should stop and they should in future be recruited and controlled by the Provincial Governments.

(ii) The Commission recommended liberal concessions, allowances and conditions of Service for European members of the Superior Services. This was done to stop the European element

from leaving the Services in India and to attract young men from the British universities in future. These recommendations of the Commission proved successful in their purpose and the exodus stopped for the time being.

(iii) In order to meet the nationalist view-point, the Indianization of the Superior Services was proposed to be accelerated. Steps were recommended to enable Indians to secure 50% seats in the Indian Civil Service within 15 years and the same percentage in the Indian Police Service within 25 years.

(iv) In the Government of India Act, 1919, a provision was made for the establishment of a Public Service Commission for the purposes of recruitment and control over the Superior Services in India. But no such Commission was appointed. The Lee Commission recommended the appointment of a Public Service Commission without any further delay and the same was constituted in 1926.

Services under the Government of India Act, 1935 : The Lee Commission had recommended that when the Reserved Departments in the Provinces would become Transferred in due course the Services working under them should also be provincialised and brought under the control of popular Ministers. The Indian Statutory Commission, which reported in 1930, did not agree with this view and held that the Indian Civil Service and the Indian Police Service were 'Security Services', and hence appointment to these must continue to be made on an All-India basis and they should remain under the control of the Secretary of State-in-Council and the others by authorities in India. The Act made only nominal changes in the organization of the Services.

The Act of 1935 classified the Services as follows :—

1. *Superior Services :* Indian Civil Service, Indian Police Service and Indian Medical Service (Civil) were treated as Superior Services. Their appointment and conditions of Service were kept in the hands of the Secretary of State-in-Council. The Secretary of State could include any other Service under this category. These Services were considered so important that no relaxation in the control of the Secretary of State over them was contemplated. These Services were placed entirely beyond the control of the popular Ministers in the Provinces.

2. *Other Services :* The rest of the Services were grouped under the heading of 'other Services'. These were placed under control of the authorities in India and their conditions of service were also regulated by them. With regard to these Services, the final control was vested in the hands of the Governor-General or such persons as the Governor-General may choose in relation to Services working under the Central Government, and in the hands

of the Governor or his nominees in case of persons working in the Provinces.

Special rights and privileges of the Services under the Act of 1935 : In 1930, the Indian Statutory Commission recommended the continuance of the then existing safeguards and rights enjoyed by the Services. Under the Government of India Act, 1935 the rights and the privileges recommended by the Lee Commission were not only retained for the Services, but a few more safeguards were added for them to strengthen their position still further against the popular Ministers.

The safeguards and privileges granted to the Superior Services under the Government of India Act, 1935, and the working of these Services under the Provincial Autonomy have been studied earlier.¹ Under the Act, Public Service Commissions were appointed for the Central Government as well as for the Provinces. Other than the Superior Services, referred to above, came to be appointed by these Commissions and subordinate authorities in India. Indianization of Services was accelerated.

Criticism of the Superior Services under the British Rule : Throughout the British Rule in India, the Superior Services, especially the Indian Civil Service, remained an eye-sore for the progressive Indians. They were made a target of bitter attack. Various reasons were responsible for this feeling. Firstly, Indians were deliberately excluded from these Services. In the later years, when the Government made up its mind to appoint Indians to these Services, it was done in a very halting and half hearted manner. Moreover, only Europeans were appointed to the key-posts in the administration. Secondly, the salaries paid to them were often regarded as very high, especially in view of the general poverty in India. Thirdly, most of these Service-men were unsympathetic towards the demand of Indians for self-government. Their outlook was generally conservative and even reactionary. The European members developed almost a vested interest in the Services and wanted to keep them as close preserves for their own younger generations. They regarded themselves as custodians of the Imperial interests in India. An average Indian felt that the unsympathetic attitude of the Services was one of the main hurdles in the way of their achieving Independence. Fourthly, the safeguards and rights granted to these Services were inconsistent with the rights of the popular Ministers. The Ministers had no power to take disciplinary action against these Service-men, through whom the Ministers were to run their Departments. When responsible governments started functioning in the Provinces, some European officers resigned. Many of them did not give full co-operation to the popular Ministers under Dyarchy and the Provincial Autonomy. Fifthly, an unfortunate though unavoidable aspect of these services

1. See p. 221.

was that a part of their salary was generally paid to the dependents of these officers in Europe. This was regarded as an economic drain of India, because the money was spent outside. Moreover, after retirement most of these European officers returned to their home countries to settle down there and spent their pensions outside India, which was a further economic drain. Sixthly, as these officers settled down outside India after retirement, even the administrative experience gained by them during their service in India was permanently lost to India, and was even used against India by way of advice to the British Government not to grant responsible government to this country. Seventhly, some of these officers had made themselves very unpopular with the national leaders by committing atrocities during the times when they were called upon to suppress popular agitations and civil disobedience movements. And lastly, they regarded themselves as public officers and not public servants of India, which made them unpopular.

The Indian Civil Service was once rightly criticized as neither Indian nor Civil nor Service. The Superior Services were admittedly one of the main pillars of the British Imperialism in India. They were supposed to be the eyes, the ears and the hands of the British Government. They were the instruments of the British Rule. No subject country can have but ill feelings towards such a body.

SERVICES UNDER THE PRESENT CONSTITUTION

Under the present Constitution, no radical change is made in the organisation of the Services except that the control of outside authorities like the Secretary of State-in-Council has altogether come to an end.

Classification of Services : Under the present Constitution, the Public Services can be divided into two broad categories—the All-India Services, which are common to the Union and the States and State Services, which serve the States exclusively. The Union Services, like the Railway Service, Post and Telegraph Service, Audit and Accounts Service, Foreign Service, etc., are of the nature of State Services because they exclusively serve the Government of India. The Indian Administrative Service (which has taken the place of the Indian Civil Service) and the Indian Police Service are the only two All-India Services recognised for the present. Any other Service may be included in this category, if the Council of States passes a resolution by not less than two-thirds of its members present and voting that it is necessary or expedient to do so in the national interest. The members of the All-India Services are appointed to most of the key-posts in all the States. As these Services are under the control of the Home Ministry, they provide a ready instrument in the hands of the Union to control State administrations, especially in a time of crisis.

Method of appointment and conditions of service : The Parliament has got full right to regulate the recruitment and lay down the conditions of service for the All-India Services. Similarly, the State Legislature is empowered to control State Services. Till such rules are made by the Legislature concerned, the President or any such person whom he may direct or the Governor or Rajpramukh of the State or any such person whom he may direct, may make such rules. The rules of the Legislature concerned when so made, shall take precedence over the rules made by the executive authority. All the rules and regulations in force, immediately before the commencement of the Constitution, shall continue to take effect, if not inconsistent with the provisions of the Constitution. All rights and privileges of the Services appointed by the Secretary of States-in-Council shall continue to be enjoyed by them, in so far as they are consistent with the provisions of the Constitution. Only citizens of India can be appointed to Civil Services, except experts and technicians who may be appointed from nationals of other countries. No discrimination can be made at the time of such appointments between citizens of India, except that special consideration may be shown to the Scheduled Castes and Scheduled Tribes. Similarly the percentage of seats fixed for the members of the Anglo-Indian community to posts in the Railway, Customs, Postal and Telegraph Services of the Union before August 15, 1947, shall continue to be so reserved for them. These seats will be reduced by 1/10 annually and after ten years all this reservation shall cease. The Union Public Service Commission and State Public Service Commissions have been provided to advise the executive authorities in the matter of making appointments and laying down rules governing the respective Services. Two or more States may have a joint Commission.

Tenure and removal of the Services : Every person who is a member of the Defence Services, Civil Services of the Union and the All-India Services holds office during the pleasure of the President, and every person belonging to State Services holds office during the pleasure of the Governor. Exception is made in the case of Judges of the Supreme Court and High Courts, the Comptroller and Auditor-General of India, the Chairmen and members of the Public Service Commissions and the Chief Election Commissioner, who are given a greater security of tenure. This summary power of dismissal given to the Chief Executive is formal only. In practice, a perfect security of tenure is provided to every civil servant. No civil servant can be dismissed or removed by authority subordinate to the one that appointed him. If the President or the Governor as the case may be, deems it necessary in order to secure the services of a person having special qualifications, he may provide for the payment to that person of compensation, if before the expiration of an agreed period that post is abolished or that person is, for reasons not connected with any misconduct on his part, required to vacate his post.

Moreover, no such person can be dismissed or removed except after an inquiry, in which he has been informed of the charges against him and given a reasonable opportunity of defending himself. But this opportunity of showing cause or defending himself may not be given ; (a) where a person is dismissed or removed on the ground of conduct which has led to his conviction on a criminal charge ; or (b) where the authority empowered to dismiss or remove a person is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry ; or (c) where the President or Governor as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry ; or (d) where the person to be dismissed or removed belongs to any such class of employees in a commercial or industrial establishment of the Union or of a State as the President, or Governor, as the case may be, may by order specify in this behalf. If a question arises whether it is reasonably practicable to hold such an inquiry, the decision thereon of the authority empowered to dismiss or remove such person shall be final.

Public Service Commissions : The Constitution provides Public Service Commissions for the Union and the States. Two or more States may have a joint Public Service Commission, when a resolution to that effect is passed by the Legislature of each of those States. The Union Public Service Commission may, with the approval of the President, agree to serve all or any of the needs of a State regarding Services, when a request for that purpose has been made by the Governor of the State.

Appointment and tenure of Members : The Chairman and other members of the Union Public Service Commission and a Joint Commission shall be appointed by the President and in the case of a State Commission by the Governor of the State. In practice, this power is exercised by the Council of Ministers. It is for the President, or the Governor to lay down the number of the members of his respective Commission. At least one-half of the members of every Public Service Commission must be persons, who had held office for at least 10 years either under the Government of India or under the Government of a State. A member of a Public Service Commission shall hold office for a term of 6 years from the date of his appointment or until he attains, in the case of the Union Commission, the age of 65 years and in the case of a State Commission or a Joint Commission the age of 60 years, whichever is earlier. The members are not eligible for reappointment to the same post.

Method of removal and suspension : The Chairman or any other member of a Public Service Commission is removable from the office, only by the orders of the President on grounds of misbehaviour after the Supreme Courts, on reference being made to it

by the President, has on enquiry reported that the Chairman or such other member as the case may be, ought to be removed. It may be noted that the power of removal lies only with the President in all cases. When such a reference is made to the Supreme Court, the Chairman or the member concerned may be suspended by the President in the case of the Union Commission or the Joint Commission and by the Governor in the case of a State Commission. The President may remove the Chairman or any other member of a Public Service Commission without any reference to Supreme Court, if the Chairman or such member is : (a) adjudged an insolvent ; (b) engages during his term of office in any paid employment outside the duties of his office ; or (c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body. This power of removal does not belong to the Governor. The Chairmen and members of Public Service Commissions are forbidden to engage in any lucrative transaction except as members of an incorporated company.

Provisions to ensure independence of the Commissions : A Public Service Commission is useless, unless its members are absolutely independent and can carry on their duties unmindful of the favours and frowns of the Executive as well as the Legislature. The Constitution has introduced various provisions to make the members of the Commissions absolutely independent in the discharge of their duties. Firstly, the conditions of service of a member of a Public Service Commission cannot be varied to his disadvantage after his appointment. Secondly, the members are forbidden to engage in any profitable deal except as members of an incorporated company. Thirdly, the members of a Public Service Commission are ineligible, after they have ceased to hold office, for further employment under the Government except to senior posts on such Commissions. Fourthly, they are appointed during good behaviour and their method of removal has been made as difficult as it could be. And lastly, salaries and expenses of the Commissions are treated as non-votable items of the budgets.

Functions of the Public Service Commission : It is the duty of the Public Service Commission to conduct examinations for appointments to the Services of the Union or the State, as the case may be. It is also the duty of the Union Public Service Commission, if requested by any two or more States to do so, to assist those States in framing and operating schemes of joint recruitment for any Services for which candidates possessing special qualifications are required.

The Government is bound to consult the Public Service Commission : (a) on all matters relating to methods of recruitment to Civil Services and for civil posts ; (b) on the principles to be allowed in making promotions and transfers from one Service to another and on the suitability of the candidates for such appointments, promotions and transfers ; (c) on all disciplinary matters affecting a person

belonging to the Services ; (d) on any claim by a person that any costs incurred by him in defending legal proceedings in respect of acts done in the execution of his duty should be paid by the State ; and (e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government. The Commission need not be consulted regarding the manner in which special consideration is to be shown to the Scheduled Castes and the Scheduled Tribes, while making appointments to various Services. The President or the Governor, as the case may be, may make regulations specifying the matters in which the Commission need not be consulted ; but all such regulations must be laid for not less than 14 days before the respective Legislature and would be subject to modification by the Legislature concerned.

The Parliament or the State Legislature, as the case may be, may provide for the exercise of additional functions by its respective Public Service Commissions. It shall be the duty of the Union Commission to report annually to the President as to the work done by the Commission. The President must lay a copy of the report before each House of the Parliament, giving reasons where the advice of the Commission was not accepted by the Government. Similarly, every State Public Service Commission must report annually to the Governor and such a report must go to the State Legislature with reasons for not accepting the advice of the Commission in some particular cases.

CRITICISM OF THE PRESENT PUBLIC SERVICES

India has chosen to be a welfare State. Her present ruling party, the Indian National Congress, has made socialist society as the goal of India. Both these ideals require greater and greater use of the Public Services. Socialization requires nationalisation of key industries and trades, which means a corresponding increase in the Services personnel. For the achievement of these ideals, it is absolutely essential that there should be a radical orientation in the outlook of the Services. It is rather unfortunate that the present Services in India have not yet been fully tuned to the needs and requirements of the times. They still suffer from many defects, some of which are as follows :—

(i) **Defects of recruitment :** No doubt, appointments to higher Services are generally made by means of open competitive examinations, which are held by independent Public Service Commissions. But yet the methods actually followed are defective in many ways. Firstly, in many Departments there is a tendency to appoint people on a temporary basis. In some cases persons have remained temporary for more than 20 years. It is very difficult for a temporary man to perform the duties of his office efficiently. His tendency is to remain disgruntled, keep looking for better opportunities elsewhere and not to give heart to the job, he is holding.

Secondly, some heads of the Departments have developed a tendency to make appointments of their choice on a temporary basis in the first instance. Later on, at the time of the regular selection by the Public Service Commissions, preference is claimed for those temporary hands on the basis of experience, thus defeating the very purpose for which the Constitution made provision for these Commissions. Thirdly, a large percentage of marks is reserved for the *viva voce* examination. It is very difficult to judge the intrinsic worth of a candidate in ten or fifteen minutes. Fourthly, some well-known States insist so much on the domicile condition that outsiders are virtually shut out from most of the appointments under those States.

(ii) **Probation treated as a mere formality :** As a general rule, Service-men are appointed on a probation for a year, but this probationary period is often treated as a mere formality. There is a general feeling that the confirmation has to follow after a year as a matter of course. Whatever the care taken at the time of appointment, the real aptitude of a man in a particular job is revealed only when he shoulders the actual work. If during the probationary period, it is revealed that the candidate is not fit for the job against which he has been appointed, he should be relieved of his duties.

(iii) **Lack of training :** After appointment to a Service, two types of training are necessary to equip a man adequately for the job. Firstly, he should be given pre-entry training, where he should be taught the special aim of the Service, rules of the office routine and other regulations concerning the Department in which he has to work. It is wrong to pitch-fork a person outright into work and think that he will learn during the course of doing the actual work. Secondly, after he has worked for some period in the job, he should be given, off and on, post-entry training. In India, very little thought has been given to the necessity of training. Here and there training classes have been started to give some pre-entry training, but very little efforts are being made to provide post-entry training. Under the British rule, a new recruit to the Indian Civil Service was usually tagged to an old I.C.S. hand, who took all possible care to train the new recruit on the right lines. It is generally complained that the old I.C.S. officers are no longer interested in training new entrants in the Indian Administrative Service on the right lines.

(iv) **Defects of the promotional system :** Promotion is necessary to act as an incentive for better worth. It is generally agreed that promotions should be left to the discretion of the Departmental Heads, who alone are competent to judge the real work of a man. Of course, the Heads of the Departments should be guided by the Service records of the candidates. But in many offices, records are not systematically maintained. Unless promotions are made on merit and merit alone, there is bound to remain a good

deal of heart-burning in the Services, which is not conducive to good work.

(v) **Rate of salaries :** The rates of salaries are defective in many ways. In some cases, salaries paid are too low and in others too high. No body should be paid wages less than what is necessary to maintain a reasonable standard of living. When a man is paid wages, which are not sufficient to meet his barest needs, it is difficult for him to attend to his work whole-heartedly. He may even succumb to the temptation of accepting a bribe. One main reason for corruption in the Police Department and the clerical staff of the Courts and some other Government offices is the absence of adequate wages. In other cases, the salaries given are too big. There is room for an all-round increase in salaries for the lower cadres, and salaries paid to men at the top need scaling down.

(vi) **Corruption persists :** In some Services, corruption continues almost as before. The malady is quite common in some subordinate Services. Off and on cases come to light where even the highest officers are found guilty of corrupt practices. The Police, the clerical staff in the Courts, the Supply Department and the P. W. D. are at times criticised for this evil. Inadequate salaries may be one cause. The Government has not so far evolved a regular machinery for detection and punishment of corruption. Even when cases come to light, they are not given salutary punishment because of the technicalities of the Rule of Law prevailing in India. Mr. Gorwala suggested the appointment of one or two experienced detectives as clerks and officers in every Department to report cases of corruption. There is a general feeling that unless corruption is rooted out at the highest levels by giving exemplary punishments, it is very difficult to expect purity of life in the lower grades.

(vii) **Mal-adjustment between the Political and the Administrative Heads :** The right type of relationship between the Ministers and the Services has not yet been established. Some Ministers are guilty of over-interference in the details of the administration. Some follow dictatorial methods in their dealing with their Service Chiefs. Sometimes even complicated cases put up by the Secretaries are turned down without giving reasons. Such an attitude breeds indifference to work on the part of the Officers. Some Ministers want to have only 'yes' men as their Secretaries, which decreases efficiency. Some Civil Servants are also to blame. The Minister is a lay man, whereas the Heads of the Department are experts. Some go to the extent of deriding Ministers, when advice is not accepted. They are not content with merely executing policies, but sometimes aspire even to lay down the policy of the Department under their charge.

(viii) **Want of an ideal and moral standards :** The main defect of the Civil Servants is that they often lack an idea, which

leads to low moral standards. The Government work is regarded as no body's work. After the working hours, the office may go to hell. Most of them regard themselves as public officers and not as public servants. The public is given the 'white-collared' treatment. Complaints of the public are treated with contempt, rather than sympathy. Work of the office is delayed on the pretext of formalities. Red-tapism is abroad. Civil servants have become slaves of the office routine because the objective is to complete formalities and not to increase output. Personal interest is altogether lacking. Various causes are responsible for this general callousness on the part of the Government servants. Miserably low salaries of the junior staff, with whom the public commonly comes in contact, is one reason. Secondly, the moral standard of some of our politicians is not high. Unless the calibre of our Legislators and Ministers improves, it is very difficult to raise the moral tone of the Services. In most of the States, the Ministers are day long busy in forming cliques for personal elevation. Intrigues within the Ministers have become common. If something could be done to improve the quality of our Legislators, it would automatically improve the calibre of the Ministers, which will necessarily improve the tone of the Services.

(ix) **Relations between the officers and the junior staff :** On the whole, the relations between the officers and the junior staff are not happy. The officers lack sympathetic touch and the juniors sense of reverence or respect. The officers complain that the juniors lack sense of responsibility ; the clerks grumble that they are not treated as human beings. There is a genuine complaint that the salaries and service rules are unfair to the low grades. Some solution on the lines of the Whitley Councils of England will have to be found out to improve the relations between the officers and the subordinates.

The responsibilities of the civil servants in India have increased manifold after the advent of Independence. It is more so because the ruling Party has accepted socialist society as the goal. The success of the Five Year Plan, the recent experiments in nationalization, the Community Projects and the like demand a civil servant with a vision and a mission. Standards have improved at places after Independence, but much more toning up is necessary.

CHAPTER XLIV

GROWTH OF JUDICIAL ADMINISTRATION

The administration of justice is an important part of the public administration. It is well said that the excellence of a government very much depends upon the calibre of its judiciary. It is the function of the judges to interpret the law and to apply it to specific cases. A judge should not only be well-versed in law, he should also be thoroughly independent and impartial in his work. The liberty of the individual can hardly be safe in a country, where judges are not upright. Apart from the calibre of the Judges, judicial institutions of the proper type are absolutely essential for administering the right type of justice, on which all civilized life depends.

Judicial administration under Moghals : Under the early Moghals, the Governor of a Province was called the *Subedar*, who was both the *Diwan* and the *Nizam* of the Province. The administration of civil and criminal justice, the collection of revenue and the preservation of law and order were all entrusted to the *Subedar*, which made him overburdened as well as autocratic. Aurangzeb appointed two separate officers to discharge these functions. The *Nizam* was entrusted with the administration of criminal justice and the enforcement of law and order ; whereas the *Diwan* was empowered to administer civil justice and to look to the collection of revenues. This was the main feature of the system of judiciary, when the East India Company began to establish its control over Indian affairs.

Judicial powers of the Company before the grant of Diwani : As we already know, the East India Company had established trading centres at Bombay, Madras and Calcutta in the 17th Century. The Moghal Rulers permitted the English settlers to remain subject to their own laws, administered by their own officers. The Charter of 1600 empowered the Company to punish its servants for breaches of its laws and rules by fine and imprisonment. The Charter of 1661, gave to the Governor and the Council of each of these settlements the power to "judge all persons belonging to the said Governor and Company, or that should live under them, in all causes, whether civil and criminal, according to the laws of the Kingdom and to execute judgments accordingly." In 1669, when Bombay was granted to the Company, it was empowered to exercise judicial authority over the natives also according to the English Law. The Charters of 1683 and 1686 empowered

the Company to establish courts for deciding mercantile and maritime cases. In 1687, a Municipal Corporation was established at Madras and the Mayor and the Aldermen were constituted a court for administering civil and criminal justice. In 1726, Mayor's courts were established in the Presidency Towns. The Mayor's Courts did not prove successful because they administered the laws of England only and were presided over by the mercantile servants of the Company, whose legal qualifications and training was next to nothing.

Reforms of Warren Hastings : The *Diwani* was granted to the Company in 1765. In 1771, the Company decided to stand forth as the Diwan. Warren Hastings was appointed in 1772 and he introduced the following reforms in the judicial administration. Firstly, two separate courts—one called *Diwani Adalat* and the other *Faujdari Adalat* were established in each of the districts. The *Diwani Adalat* was presided over by a European Collector, thus combining the judicial and revenue functions in one and the same officer. The *Faujdari Adalat* continued under the Mohammedan Law Officers. Secondly, at the headquarters in Calcutta, two courts of appeal were established—the *Sadar Diwani Adalat*, and the *Sadar Nizamat Adalat*—the former presided over by the Governor and the Council and the latter by an Officer appointed on behalf of the Nizam assisted by Mohammedan Law Officers, under the general supervision of the Governor and the Council. Thirdly, in 1781, the revenue administration was separated from the judicial administration. The Collectors were deprived of their judicial powers. Instead of the Collectors, new judicial officers, called the superintendents were appointed to administer civil justice. These civil judges were invested with magisterial power of arrest and commitment of offenders for trial before the *Faujdari Courts*.

In 1773, the Supreme Court was established at Calcutta under the Regulating Act. The Constitution, functions and deficiencies of the Supreme Court as well as the way in which its defects were remedied in 1781, had already been described in an earlier chapter. Such Courts were later established in Madras and Bombay with similar jurisdiction.

Reforms of Lord Cornwallis : Lord Cornwallis came in 1786, with definite instructions from the Directors to reunite the functions of a revenue collector, civil judge and magistrate in one and the same person. He had to carry out these instructions and the change was brought about in 1787. But Cornwallis was not happy over it, especially over the combination of the judicial and the revenue functions. "The Civil Courts presided over by the revenue officers had been converted into instruments of oppression and the inhabitants of the Provinces were groaning under the wrongs which had been inflicted upon them by officers, in whom the fiscal and judicial powers had been so unwisely combined and who

consummated in one capacity, the injuries which they originated in the other."¹

In order to improve the administration of justice, Cornwallis brought about many reforms. Firstly, the revenue and judicial functions were entrusted to separate hands. Secondly, he was eager to give to the helpless inhabitants some measures of redress against the Officers who often behaved in a reckless and arbitrary manner. Cornwallis made Officers amenable to superior courts of law. Thirdly, he prepared a code of laws containing all the judicial regulations. Fourthly, he gave judges good salaries, so that they should be free from the temptation of accepting bribes. And lastly, court fees at the time of institution of cases were abolished to make justice cheap. The Reforms of Cornwallis were not free from defects. The dropping of court fees increased litigation. Indians were excluded from any share in the administration of justice, which was bitterly resented.

In 1793, Mayor Courts were abolished at Bombay and Madras and were substituted by Recorders Courts. The Recorders Courts were also abolished later on. In 1801, the Governor and the Council found it too difficult to cope with the work of appeals: which led to the appointment of separate Judges to sit as *Sadar Adalats*.

Reforms of Lord Bentinck : Lord Bentinck like Lord Cornwallis was also fired with the ambition to improve the administration of justice. He had various reforms to his credit. Firstly, the Provincial Court of Appeal and the Circuit Court were abolished. Secondly, a Presidency was divided into twenty divisions, each with a Commissioner of Revenue and Circuit. In 1831, the duties of the Session, i. e., the administration of criminal justice were entrusted to civil judges. This led to the emergence of the District and Session judges doing civil and criminal work side by side. The magisterial functions of the civil judges were transferred to the Collector. This led to the emergence of the Collector-Magistrate—thus combining the work of criminal justice and revenue administration, along with the duties of enforcing law and order. Thirdly, a Court of Appeal was established for the North-Western Provinces at Allahabad. Fourthly, Indians began to be appointed to bigger posts in the judicial administration. Principal *Sadar Ameen*s were appointed from among Indians with more powers and bigger salaries.

Establishment of High Courts : The Indian High Courts Act was passed in 1861, which empowered the Queen to establish by Letters Patent, High Courts in Calcutta, Madras and Bombay, which brought about complete amalgamation between the Company's Courts and Crown Courts, which so far had existed side by side.

1. Kaye : Administration of East India Company, p. 336.

The old Supreme Courts and *Adalat* Courts were abolished. A High Court was established for North-Western Province at Allahabad in 1866 and a Chief Court in Punjab under an Act of the Indian Legislature. The Indian Legislature was given the power to regulate the constitution and jurisdiction of ordinary civil courts. Between 1865 and 1873, Civil Court Acts were passed in all Provinces which established a system of more or less similar civil courts throughout the country. In 1872, Criminal Procedure Code made the system of criminal administration uniform throughout India. In 1911, the number of High Court Judges was fixed between 15 and 20 and power was given to the Governor-General in-Council to establish High Courts in any part of India. Under this power, High Courts were set up at Patna, Lahore, Nagpur and Rangoon. Chief Courts were established in Oudh and Judicial Commissioners' Courts in N.W.F.P. and Sind, which exercised jurisdiction almost similar to that of the High Courts. The provisions made by the Constitution regarding the High Courts in States and Subordinate Courts already have been stated.¹

Federal Court and Privy Council : Under the Act of 1935, the Federal Court was established in India to hear constitutional cases. The constitution and functions of the Federal Court have been studied earlier.² Till 1949, the Privy Council of England was the highest court of appeal for India. Appeals were taken to the Privy Council in constitutional matters from the decisions of the Federal Court and in civil and criminal matters from the decisions of the High Courts. The Privy Council, as the highest court for India, also possessed the right to grant special leave to appeal, in cases, where regular appeal did not lie or the court below refused permission for appeal. In 1949, the right of appeal to the Privy Council was abolished. In 1950, with the commencement of the Constitution, the Supreme Court was established in India, which inherited the jurisdiction of the Federal Court as well as the Privy Council and became the highest Court of India. The constitution and functions of the Supreme Court are discussed in a separate Chapter.³

SOME ASPECTS OF THE ADMINISTRATION OF JUSTICE

A comparative study of the judicial systems prevailing in different countries suggests the necessity for introducing certain reforms in the judicial administration in India.

(1) **More appeals than one :** An appeal is necessary to make an allowance for the fallibility of human nature. The English system admits more than one appeal in most of the cases. In many cases the system permits even more than two appeals. The same

1. See Chapter XXXVII.

2. See pp. 195-7.

3. See Chapter XXXVI.

is the case in India. The multiple-appeal system is open to various objections. Firstly, it interpolates a long delay. So much time is wasted in the decision of a case that at the end one wonders, whether it was worthwhile to go to the Courts at all. Justice delayed is justice denied. Secondly, the system of multiple-appeals gives an unfair advantage to the rich against the poor, more so to the Government and other public bodies, which play with other people's money. Thirdly, a reversal of the case in the last stage may saddle a party with all the costs of the Courts below. Fourthly, sometimes it is found that the highest Court has overruled by a majority of one, a unanimous decision of the Court below, which has affirmed the judgment of the Court of the first instance. Fifthly, it is impossible to say with absolute certainty that the decision is right, although, many rehearings or appeals may be permitted. Sixthly, when there is a Court of the second appeal, both the parties at the very outset, if the case is an important one, recognize that matter will not end, unless it has gone to the higher Appellate Court. Accordingly, the judgment of the Court of first appeal is regarded as a mere stage in the proceedings, which is not expected by any one to have a decisive effect. The waste of time and money, and in a certain sense, the cheapening of the judicial dignity involved in such an impression is only too obvious. From all this we come to the conclusion that there should be *one and only one Court of Appeal*.

(2) Courts of First Instance and Single-Judge System : Our Constitution places organization of village *Panchayats* in the Directive Principles. This was very necessary. In some of the States, the *Panchayats* are already doing useful work, although they are somewhat handicapped for non-availability of the right type of '*Panches*.' The system is so cheap, popular and expeditious that, in the predominantly rural conditions of India, Indian poverty and the dispersal of our villages far and wide, it is in the public interests that we should, not only retain, but perfect the system as far and as soon as possible.

Higher up in the ladder, our courts of First Instance are mostly the courts of the Subordinate Civil Judges and the lower grade Magistrates. These Courts are presided over by a single judge, as a general rule. This single-judge system, again, takes the pattern of the English system. Before we point out the comparative demerits of the single-judge system, it will be useful to point out that in France and Germany collegiate system or the Division Benches are the rule, both in the Courts of First Instance as well as in the Courts of Appeal. When the Court will consist of more than one Judge, the following advantages will accrue. Firstly, there will be lesser chance of corruption. Secondly, they can consult and correct each other. Thirdly, there will be lesser chance for the introduction of personal prejudice. Fourthly, if only one appeal is allowed, we should make the original Court

as strong as possible. Fifthly, if there is more than one Judge, any one of them may record evidence and dispose off such like formal matters, which will make justice speedy. Sixthly, the chances of a wrong decision are minimized. And seventhly, such a tribunal will inspire more public confidence.

(3) Separation of Prosecuting Agency and Police : At present, the work of prosecution, below the High Court level, is mostly carried on by (i) the prosecution branch of the Police consisting of Prosecuting Deputy Superintendents of Police, Prosecuting Inspectors and Prosecuting Sub-Inspectors, who conduct prosecutions in Magistrates' Courts and are administratively under the Superintendent of Police, and (ii) Public Prosecutors, who are under the Legal Remembrancer and the District Magistrate of the district. The prosecution of cases is conducted in the Courts below the Sessions Judge mostly by the prosecution branch of the Police. The duty of a Public Prosecutor is, primarily, to conduct the Session trials. He is the chief legal adviser in the district, and criminal administration receives final guidance from him in all matters. He is given the power of withdrawing cases. The Public Prosecutor is appointed on a temporary basis and the retention of his services and promotion mostly depend on the reports of the District Magistrate and the Sessions Judge. It is, therefore, natural that a Public Prosecutor is, almost always, subservient to the District Magistrate.

The prosecution agency, above described, is such that an accused finds himself virtually in a hostile camp. He is in the hands of a Magistrate, who combines in himself the functions of the executive and the judiciary and a prosecutor, who combines in himself the functions of an investigator and a prosecutor. The Superintendent of Police is the chief investigator of the district. It is quite natural that an investigator who has sometimes taken enormous pain to investigate and build a case would leave no stone unturned in trying to secure the conviction of the accused, if only to justify his investigation. The Superintendent of Police becomes the prosecutor by virtue of his control over the Police Prosecution Agency.

The true functions of a Public Prosecutor are, however, different. He represents the State. His duty is to ensure that justice is done and not to get the conviction of the accused by hook or by crook. But as Public Prosecutor is at the mercy of the District Magistrate, who is the chief investigator of the district in a way, the Public Prosecutor comes almost wholly under the influence of the investigator. The result is that we find a general tendency on the part of Public Prosecutors to bend all their energies in getting the conviction of the accused. Public Prosecutors have, largely, become public persecutors. The remedy suggested is that the control of the District Magistrate over the Public Prosecutors should be stopped and they

should be appointed on a basis of permanent tenure to make them independent and enable them to discharge their duties in the interests of the public, rather than that of the executive or the police. The Prosecution Branch of the Police should also come under the control of the Public Prosecutor. A Director of Public Prosecutions should be appointed in each State like England to advise the Government on all such matters, and to control all the Public Prosecutors in the State. This will make the Public Prosecutors independent and they can boldly refuse to persist in an untenable charge. This will prevent hardships to many an accused and would inspire public confidence.

(4) **Separate personnel for Civil and Criminal work :** In India below the stage of the District and Sessions Judge, the Judges for doing civil and criminal work are separate. In the person of the District and Sessions Judge, both these functions are combined and this is also the case in the High Courts. In England too, the functions are combined in the High Courts. In France and Germany, both these functions are combined even at the lowest level. It appears that, in the interest of administration of Justice it will, probably, be advantageous to separate the personnel doing civil and criminal work throughout. The advantages of such a step are obvious. Firstly, this will be more in keeping with the principles of specialization. Secondly, efficiency in civil work requires a different type of training and bent of mind than efficiency in criminal work.

(5) **Locale of Justice :** Our Courts were installed mostly haphazardly to suit the administrative convenience of the British rulers. In any system of perfect reforms, it will be necessary to change their situation to make them *equitably distanced* from most of the important places in the State. For example, there was no point in keeping the Punjab High Court at Simla and also in asking the Delhi people to take their appeals to that place. The establishment of a Circuit (High) Court at Delhi was a step in the right direction.

(6) **The Assessors and Juries :** Both these institutions are an attempt to associate the lay element with the expert in the trial of cases mostly of the criminal nature. Jury system was very popular in England. Recently it has come under fire even there. The English people will probably persist in keeping the system for a long time. In India the system is not popular. The Assessors were nominated by the District Magistrate and as such were under the influence of the Police. The Juries have, probably, no place in the future except as experts for particular type of cases. Under the British Government, the system was used to provide a place of so-called honour to the reactionary element in the country. The need for Jury is still less, when there are Division Benches throughout. These bodies are supposed to decide questions of fact. But the questions of fact are mostly interwoven

with questions of law and it is very difficult for a layman to pronounce correct opinion about it. The system of Assessors has recently been abolished. The Jury System needs reorientation.

(7) **Honorary Agency :** It is universally known that the Honorary Agency hardly meets the needs of justice. In England, Honorary Judges are very common in criminal trials. Prof. Laski writes, "Honorary Magistracies are distributed to the supporters of the Government during election, etc., as a dead fox is thrown to the hounds after a day's run." In the Punjab, Honorary Magistrates are nicknamed as "*andhary* Magistrates" (dust-storm magistrates). In U. P., they are called *anari* Magistrates (amateur magistrates). No doubt, by retaining this agency some expenditure is saved, but that is at the cost of real justice because it administers anything but justice. In India, these posts were used to satisfy the vanity of the reactionary aristocracy by the British Government. The idea was to give them power, rather than to take service from them. There is already a move in some of the States to abolish the system. In others, fresh appointments have been stopped. The sooner the system is given the go-by, the better.

(8) **Cost of Justice :** The Cost of Justice should be such that justice is not denied to the poor because of the expenses involved. In India, elaborate system of appeals, endless formalities, lack of codification, tactics of some of the members of the Bar, situation of the Courts, High Court Fees and various other matters have increased the cost of justice very much. This puts the rich decidedly in an advantage as against the poor. People often claim that our Courts of Justice are open to all persons alike. And so is a big Bombay hotel to all those who can afford to pay for its entertainment.

(9) **Speed of Justice :** There is a famous maxim of law that, "Justice delayed is justice denied". In the most famous of all soliloquies, "the law's delay" is placed by Shakespeare among the chief ills of human life. Some procedural changes have recently been introduced to speed up justice. Still the delay in the decision of cases, especially of civil nature, is simply colossal.

(10) **Appointment, salaries, promotion, removal and retirement of Judges :** A Judge should be well versed in law, incorruptible and independent. This depends, to a very large extent on the method of his appointment, the appointing authority, the system of examinations, the influences which decide his promotions and the way in which he can be removed. Some of these require overhauling. It may be added that the Judges should remain above party politics.

(11) **Separation of Executive from Judiciary :** The combination of the executive and the judicial power makes the executive strong, but personal liberty suffers. The arrangement was very

helpful to the foreign masters during the British days. The combination of these two powers makes a prosecutor the judge as well. In the new Constitution, the separation of the Executive from the Judiciary has been placed as an item in the Directive Principles. In U. P. and some other States separation has partially been introduced. Wholesale separation will necessarily take time; but speedier steps are necessary.

(12) **Separate Ministry for Justice:** At present, Home Member of the Government of India is in charge of this work. But he is already overburdened, and has no time to look to these matters. The Minister for Legal Affairs is mostly occupied with the introduction, amendment and removal of laws and has paid little attention to the Machinery of Justice. In the States this work is under the charge of the Minister incharge of Law and Order. The Government of India appears to be alive to the need of reforms in the Administration of Justice and has recently set up a Law Commission. Probably the appointment of a separate Deputy Minister incharge of these affairs is necessary.

(13) **The Problems of Bar:** Various reforms are called for in the prevailing conditions of our Bars. Attention is invited only to one aspect of the profession. There seems to be no excuse when a lawyer knowingly argues a false case or tutors his clients and witnesses to tell lies to win a case. The lawyers as a class, when indicted thus, take refuge in saying that they are not supposed to know the truth or falsehood of the cases of their clients. Their duty is to prepare and argue a case as presented to them. They may not be supposed to know the truth or falsehood of cases of their clients; but what should be their attitude when they actually come to know the true facts of a case? As a matter of fact, most of the lawyers do come to know the actual facts about the cases of their clients. Overwhelming majority of them will not hesitate to take up, knowingly, a false case and to tutor their client and witnesses to tell lies, if that could win their case. All this adds to the miseries of the people, and makes justice unworthy and dreadful. It is suggested that a lawyer should be considered criminally guilty when he has knowingly prepared or argued a false case. Law is good as a profession provided money is not made the sole objective and nothing is done to defeat the true ends of justice.

In conclusion, we may say that the Administration of Justice in India needs various reforms. At present a feeling exists that if you are in a difficulty any recourse is better, than going to the law courts. It is said, "*jeet gia so har gia, har gia so mar gia*" (he who succeeds, fails; and he who fails, dies), which, very correctly, sums up the impression of the general public about our administration of justice. This is a very unfortunate impression. Justice should be cheap, expeditious, easily accessible and understandable. It is submitted that a Court of Justice should be like a mother to whom children run for ironing out differences and for settling disputes.

CHAPTER XLV

GROWTH OF LOCAL SELF-GOVERNMENT IN INDIA

A local government may be defined as an agency which manages or conducts the public affairs of a small locality such as a district, a town or a village. If these affairs are conducted by the residents of the area the agency is described as a unit of local self-government.

Necessity of local self-Government : Institutions of local self-Government are useful in many ways. Firstly, such bodies serve as cradles of democracy. Democracy can hardly succeed in a country, where the people have not learnt to run their local affairs themselves. Men learn to work for others and with others. Secondly, local self-government leads to efficiency. It is impossible for the State Government to provide for local needs like that of sanitation, water supply, etc., in an effective manner. Thirdly, the system is economical. As the money for local needs comes mainly from the local people, they are far more careful in spending it than outsiders. Fourthly, only the residents of the area, can best understand their needs. They alone can devise the best ways to meet them. And finally, by sharing responsibility, Local Bodies make the burden of the State Government lighter.

Local Governments before Lord Mayo : Self-governing institutions of a rudimentary type existed in the villages of India from the earliest times. The most important feature of the village government was the *Panchayat* or the Village Council, which was an association of the inhabitants of the village for purposes of administrative and judicial work. "In the Code of Manu, the connection of the King with the village is of a direct kind, the head man himself being appointed by him. The Arthsastra describes a vast arrangement of espionage by which the King might be kept in touch with the affairs of the village. The Sukraniti requires the King to inspect the villages personally every year."¹ During the time of the East India Company, attempts were made to revive and utilize the indigenous village institutions for the purposes of local government. But these efforts were not successful. The present system of local self-government in India is entirely the creation of the British Government except the village Panchayats and is chiefly modelled on the lines of the Borough and County Councils of England.

1. J. Mathai : Village Government in British India, page 53.

The first Local Body, viz., the Corporation of Madras was created in India in 1687. The principle was partly extended to other Presidency towns in 1726. Under the Regulating Act of 1773, Justices of Peace were appointed in the Presidency towns, who were entrusted with local functions like cleanliness, scavenging and sanitation. In 1817 and 1830, attempts were made to enlarge the functions of these bodies. No attempt was, however, made outside the Presidency towns to set up Local Bodies till 1842. In 1850, an Act was passed which permitted the establishment of Local Bodies in any town of the British India. But as the Act was of a permissive nature, much progress was not made under it. The object in setting up these Bodies was merely administrative convenience. The necessity of introducing local self-government was felt by the Government only when they were faced with the difficulties of realizing local taxes.

Mayo's resolution of 1870 : It was during the Viceroyalty of Lord Mayo that a start was made on the road to local self-government in India. In 1870, the Government of Lord Mayo passed a resolution regarding Provincial finance, in which need was stressed for introducing self-government in local areas. The resolution pointed out, "But beyond all this (need for financial devolution), there is greater and wider object in view. Local interest, supervision and care are necessary to success in the management of funds devoted to education, sanitation, medical charity and local public works. The operation of the resolution in its full meaning and integrity will afford opportunities for the development of self-governing, for strengthening municipal institutions and for the association of native and Europeans to a greater extent than here-to-fore in the administration of affairs." In pursuance of this policy, Municipal Acts were passed in many Provinces, which introduced elective system in the Local Bodies for the first time.

In 1881, the Provincial Governments were advised by the Central Government that "it would be hopeless to expect any real development of self-government if the Local Bodies were subject to check and interference in matters of detail." The progress made by local self-government in India in pursuance of the resolution of 1870 was described by the Government in 1882, as follows : "Considerable progress had been made since 1870. A large income from local rates and cesses had been secured, and in some Provinces the management of the income had been freely entrusted to Local Bodies. Municipalities had also increased in number and usefulness.....In many places, services admirably adopted for local government were reserved in the hands of the Central administration, while everywhere heavy charges were levied on Municipalities in connection with the Police, over which they had necessarily no executive control".

Ripon's resolution of 1882 : Lord Ripon is often described as the father of local self-government in India. In 1882, the

Government of Lord Ripon issued a resolution, which is a landmark in the history of local self-government in India. The resolution dealt with every aspect of local self-government in a thorough and comprehensive manner. The following objectives and directions were laid down in the resolution :

(i) Local self-government is to be introduced, "not primarily with a view to improvement in administration. It is chiefly desirable as an instrument of political and popular education." The Government has "no doubt, that in course of time, as local knowledge and local interest are brought to bear more freely upon local administration improved efficiency will in fact follow..... The experiment hitherto made in the direction of the local self-government had not been encouraging because the principle had not yet been in any general or satisfactory fashion fully and fairly tried".

(ii) The resolution called upon the Provincial Governments to establish a "net work of Local Boards charged with definite duties and entrusted with definite funds throughout the country. The area of the jurisdiction allotted to each Board should be sufficiently small to ensure both local knowledge and local interest on the part of each member. These Boards, whether urban or rural, should everywhere contain a large preponderance of non-official members. In no case should the official members of the Board be more than one-third of the whole. Members of the Board should be chosen by election wherever practicable." The Provincial Governments were required to establish the system of election in some form or the other as widely as possible.

(iii) The Provincial Government should exercise its control over the Local Bodies "from without, rather than within". They should supervise and check the Local Bodies ; but not dictate to them. It would be hopeless to expect any development of self-government, if Local Bodies were subject to interference by the Provincial Government in matters of detail. Two methods of controlling local self-governing Bodies were recommended. In the first place, the sanction of the Government should be required to give validity to certain acts, such as the raising of loans, the imposition of taxes in other than duly authorised form, the alienation of municipal property, interference with any matters involving religious questions or affecting public peace and the like. Secondly, the Provincial Government should have power to set aside altogether the proceedings of a Board in particular cases. It should have the further power to suspend the Board temporarily in the event of any gross and continued neglect of an important duty. Absolute supersession of a Board required the consent of the Government of India."

(iv) In order to free the Local Bodies from official interference, the Collector should no longer be the *ex-officio* President of the

Local Boards within his jurisdiction. Whenever practical, non-official persons should act as chairmen of the Local Boards. "The appointment of the chairman should always be subject to the approval of the Local Government, but need not be made by it. The Government would be glad to see the Boards allowed in as many cases as possible to elect its own chairman."

(v) The Boards should be entrusted not merely with the "expenditure of fixed allotment of funds, but also with the management of certain local sources of revenue."

The resolution of 1882 was truly a revolutionary one. It made a sincere and honest attempt to give India self-governing institutions in local areas for the first time in the history of the British Rule. Prof. M. Venkatarangaiya writes, "It is a classic among the pronouncements made on the subject by the higher authorities and formed the basis of all subsequent development in the history of Indian local institutions. It gave definite lead and laid down a clear-cut path for all Provincial Governments really interested in the advance of local self-government."

The efforts made by Lord Ripon were no doubt sincere, but neither the Provincial Governments, nor the British bureaucracy in India was keen in introducing the policy underlying the resolution. Some of the Governors-General like Lord Curzon who came later were simply not interested in developing local self-government in India. Some Municipal and Local Board Acts were passed by the Provinces to implement the resolution, but the power of increasing the number of the elected members or that of appointing non-official Chairman was mostly reluctantly used.

Decentralisation Commission (1909) : No progress worth the name was made in local self-government when the Decentralisation Commission reported in 1909. In 1884-85, the number of elected members of the Municipal Councils was about one-fourth of the total. In 1909, i. e. after about twenty-five years, the number of the elected members was less than one-half, although the resolution of 1882 had recommended that in no case the official members should be more than one-third of the whole. In the Local Boards, the progress was even slower. Till 1909, the Local Boards continued to be wholly nominated. The Collectors continued to be their *ex-officio* Presidents. There was no relaxation in the official control exercised over them. The Decentralization Commission recorded, "Critics of the present system have dwelt on the failure to develop the principle of election, and on the appointment of the official Presidents. The Boards, it has been urged, have practically become a Department of the Government administration ; their work is done by the official element within the Boards themselves, or by the Government Departments at the Board's expense ; their proceedings are subject to excessive outside control ; and in present circumstances, they can never become, as

Lord Ripon intended them to be, effective instruments of local self-government." The Commission made some useful recommendations to remedy some of the defects pointed out by the critics. After six long years, the Government of India came out with a resolution endorsing the proposals of the Commission. But nothing material came out of those recommendations because the steps to be taken were entirely left to the discretion of the Provincial Governments.

Progress under Dyarchy : In 1917 came the famous Declaration of Mr. Montagu, which announced the policy of introducing responsible government in India by gradual stages. In the Montford Report, it was urged that the new policy should be implemented in the local areas immediately. The suggestion was to introduce complete popular control in Local Bodies. The official and outside interferences were to be reduced to the minimum. In order to give effect to this policy, a resolution was issued by the Government of India in 1918, which suggested many reforms. Under Dyarchy, local self-government came under the charge of the popular Ministers, who were naturally keen to introduce some real measure of popular control in Local Bodies. The Ministers were, however, considerably handicapped for want of adequate funds because the Finance Department in every Province was kept under the charge of a Councillor. All the same, some progress was definitely made in the right direction. Municipal and Local Board Acts were passed in almost all the Provinces, which increased the proportion of the elected members. Efforts were made to reduce the official control. Laws were passed to introduce *Panchayats* in villages. Voting qualifications were lowered everywhere.

Progress during Provincial Autonomy : Under the Government of India Act, 1935, Provincial Autonomy started functioning in the Provinces from April 1, 1937. The Provincial administrations came entirely in the hands of popular Ministers including the Finance Department, which led to some further progress.

Under the present Constitution, development of the Panchayat System in villages is included in the Directive Principles. Some States have recently passed new Panchayat Acts to implement the Directive in the Constitution.

Kinds of Local Self-Governing Institutions : The self-governing Local Institutions in India can be divided into two categories—urban and rural. The main urban bodies are the Corporations, Municipalities, Cantonment Boards and Improvement Trusts. District Boards and Village *Panchayats* serve the rural areas. The Corporations exist in the Presidency towns and are mostly autonomous in character. The Municipalities are found in big cities. The major portion of their members is elected. At places, these are wholly elected. The Chairmen are elected by the members.

The official element has almost entirely disappeared. The Cantonment Boards serve the needs of the urban military areas. They are subject to the control of the Army Department of the Central Government. Strict vigilance is kept over them in the interests of the Armed Forces, which are stationed in these areas. Improvement Trusts are found in some big cities to assure a planned development of houses and other buildings. A District Board serves the needs of the rural areas of a District. Majority of its members are also elected. Formerly the District Magistrates used to be the *ex-officio* Chairmen of the Boards. Now the Presiding Officer is usually elected by the members. *Panchayats* administer to the needs of villages and have considerably increased in number after Independence. The scope of their functions has also been widened.

Functions : The Local Bodies are usually entrusted with two types of functions: essential and optional. The essential functions include lighting; cleaning of public places; extinguishing fires; checking offensive or dangerous trades; maintaining places for the disposal of the dead; constructing, altering and maintaining public streets, markets, slaughter-houses, drains, washing-places, drinking fountains, wells, etc.; arranging supply of water; registering births and deaths; public vaccination; establishing public hospitals and dispensaries; establishing and maintaining primary schools, etc. Some of the discretionary functions are: construction and maintenance of public parks, gardens, libraries, museums, lunatic asylums, rest houses, *dharmshalas* and other public buildings; taking a census; making a survey; maintaining a farm or factory for the disposal of the sewage; and other measures likely to promote public safety, health, convenience or education.

Sources of Income : The taxes which the Local Bodies are usually competent to levy are: a rate on buildings or lands or both; a tax on vehicles; an octroi duty on goods or animals or both; a tax on dogs; a special sanitary cess on private latrines; a general or special water rate; a lighting tax; a tax on pilgrims; a tax upon drainage; a general sanitary cess; a special educational tax; a terminal tax and toll on vehicles. This income is, at times, supplemented by loans from the State Government and grants-in-aid which accidentally give the State Governments an opportunity to keep a watch on the expenditure of the Local Bodies. Municipal undertakings and enterprises have been used at places to have additional income.

State control over Local Bodies : The State control over Local Bodies is necessary for various reasons. Its object may be to assist the local authorities in performing their duties effectively. Control may be necessary to assure that "the local authorities do not tap financial resources to such an extent as to cripple the State Exchequer". Restrictions may be necessary to prevent extravagance. When a grant-in-aid is given by the State Government, control

may be necessary to assure that the money is spent economically and for the stated purpose. Its object may be to prevent abuse or misuse of power by local authorities.

In India, the State control over Local Bodies has assumed four forms, viz., legislative, financial, administrative and judicial. "Legislatively, the constitution and functions of local bodies are defined by State Acts, and the detailed application of the Acts is regulated by rules made by the State Government. State Acts pertain to the number of members for particular local bodies, preparation of electoral rolls and conduct of elections, assessment and collection of taxes. Financially, the sanction of the State Government is necessary for the Board's proposals of taxation, raising of loans and in many cases for their Budgets. Audit of the Board's accounts is done by a State agency (Examiner of Local Fund Accounts) which has power of disallowance. Administratively, the Government have the right to information, power of inspection, of sanctioning regulations and bye-laws and numerous other kinds of the Board's decisions. They have certain powers in regard to the appointment of executive officers as well as other officers. They prescribe the rules and conditions of their service and lay down the scale of their emoluments. They have large reserve powers in emergencies, and in case a municipality should prove unwilling or incompetent for a particular task, it may be carried out by the local government over the head of the local body. The State Government controls the Board's establishments in various ways : it can suspend resolutions of specific kinds, hear appeals from its employees and the public against certain orders and remove particular member or the Chairman or dissolve or supersede the Board itself. Judicially, the State Government decides controversies between two or more local bodies, and conflicts of jurisdiction between a Board and its Committees and officers. The Courts also have power to interpret the local laws or declare *ultra vires* all local Acts in excess of legal powers".¹

The aim of the State Control should be advice, help and supervision. It should not degenerate into dictation by the State Government. Local Bodies should be allowed to learn by making mistakes. Interference is justified only in cases of gross abuse of power or serious neglect of duties. The State Government should ordinarily, act as a 'philosopher, friend and guide' of the Local Bodies, if they are to be developed on right lines. In the present conditions of our Local Bodies, need for close supervision shall however remain for many years to come in the interests of purity of administration.

Partial failure of local self-government : The experiment in local self-government has not been an unqualified success in India.

1. Problems of Public Administration in India, pp. 252-253.

This is especially so with regard to the rural areas. Various causes are responsible for it.

In the first place, the civic sense has not yet been fully developed in the main body of our citizens. This may be partly due to poverty, partly illiteracy and partly the slavery suffered for generations. But the fact is there. The right use of the vote is not made. The necessary intelligence and vigilance are often lacking. Secondly, the official interference at places is said to be excessive. Thirdly, there is a general paucity of funds. This is partly due to inelastic sources of revenue at the disposal of the Local Bodies and partly because of the general evasion on the part of our citizens to pay municipal taxes and rates. Off and on, the State Governments give help in the form of grants-in-aid. But the need is more. Ordinarily, the local public must pay for the local services. Unless local people are willing to pay more, it is unfair to expect better services. Fourthly, the civil servants working in Local Bodies are often found to be inefficient. This is partly due to the low rate of salaries paid, and partly because no clear-cut principles are followed in the recruitment of the Local staff. Only a holder of a regular Diploma from some Institute teaching a Course in Local Self-Government should be employed for service in Local Bodies. Reasonably good salaries, security for tenure and chances of promotion on merit are necessary to improve their tone of work. Fifthly, some Local Bodies are often found guilty of vices of corruption, nepotism and favouritism. These defects can be removed only if the calibre of those who run these Bodies is improved. Lastly, the Local Bodies often suffer due to party factions and intrigues among those who are called upon to administer these Bodies.

Unless our Local Bodies start functioning on proper lines, democracy in India may not ultimately succeed. Parliamentary democracy is a difficult affair. It requires intelligent citizens and trained Legislators. Local Bodies must become petty local Parliaments and act as nurseries of our future Legislators and Ministers. Parliamentary democracy has never been on a sound footing in France. One reason is that the country has not realized the importance of local self-government. France has been described as a Republic at the top and an Empire at the bottom. In local affairs, the people of France do not govern themselves. They are governed by the Centre, which is not desirable.

CHAPTER XLVI

GENERAL ELECTIONS

The first general elections in India under the present Constitution were held in 1951-52 on the basis of universal adult franchise. The provision of universal adult franchise in the Constitution was an act of faith on the part of the framers of the Constitution. The holding of general elections in 1951-52 was a bold implementation of that faith in man and democracy. In a country steeped in poverty and ignorance, it was revolutionary indeed to give the right of vote to every adult without any distinction whatsoever. The elections constituted the most gigantic political experiment in the history of democracy. It was the world's largest free elections as is borne out from the following facts :—

(i) Number of persons who possessed the right to vote	...	about 176 millions
(ii) Number of constituencies	...	3,293
(iii) Number of polling stations	...	2,25,000
(iv) Number of ballot papers used	...	620,000,000
(v) Number of candidates who contested seats for the House of the People	...	1,874
(vi) Number of candidates who contested seats for the State Assemblies	...	15,000
(vii) Number of persons who actually voted		105.5 millions
(viii) Number of political organizations which took part in the elections	...	77
(ix) Expenditure incurred by the Government on the elections	...	about Rs. 10 crores
(x) Number of persons employed by the Government for conducting elections...		5,60,000

The facts and figures about the first general elections contained in the following tables are revealing in many ways :—

TABLE No. 1
Voting in the Country

Name of the State	Percentage of voting	
	House of the People	State Assemblies
Assam	49.18	50.24
Bihar	19.03	40.90
Bombay	56.35	57.02
Madhya Pradesh	47.11	46.03
Madras	56.50	56.57
Orissa	34.05	34.56
Punjab	56.05	55.87
Uttar Pradesh	38.98	39.33
West Bengal	44.78	43.48
—		
Hyderabad	42.84	43.16
Madhya Bharat	36.16	35.73
Mysore	53.14	52.89
Pepsu	59.20	59.43
Rajasthan	41.06	40.77
Saurashtra	42.20	48.28
Travancore Cochin	70.80	69.37
—		
Ajmer	54.27	52.24
Bhopal	40.35	37.31
Coorg	67.46	65.87
Delhi	57.72	58.95
Himachal Pradesh	56.26	26.68
Vindhya Pradesh	30.23	29.61
—		
For the country as a whole	44.63	45.30

TABLE No. 2
House of the People

Name of the Party	Percentage of votes polled	Number of seats won	Percentage of seats won
Congress	45.01	364	74.43
Socialists	10.50	12	2.45
Kisan Mazdoor Praja Party	5.87	10	2.04
Communists	5.06	26	5.31
Jan Sangh	3.05	3	0.61
Scheduled Castes Federation	2.30	2	0.40
Ram Rajya Parishad	1.98	3	0.61
Krishikar Lok Party	1.40	1	0.20
Akali Dal	1.10	4	0.88
Hindu Maha Sabha	0.91	4	0.88
Independents	15.90	41	8.31
Other Parties	6.92	19	3.88

TABLE No. 3
State Assemblies

Name of the Party	Percentage of votes polled	Number of seats won	Percentage of seats won
Congress	42.36	2,247	68.56
Socialists	9.73	128	3.90
Kisan Mazdoor Praja Party	5.10	77	2.34
Communists	5.84	173	5.27
Jan Sangh	2.81	333	1.00
Scheduled Castes Federation	1.74	12	0.36
Ram Rajya Parishad	1.21	32	0.97
Krishak Lok Party	1.07	23	0.70
Akali Dal	0.89	33	1.00
Hindu Maha Sabha	0.83	20	0.60
Independents & other Parties	28.42	295	15.30

TABLE No. 4

Strength of important Parties in States

Name of the State	Congress	Socialists	Communis- tists	Kisan Maz door Praja Party
Assam	43.48	13.56	2.83	5.99
Bihar	41.47	18.10	1.14	2.76
Bombay	49.95	11.91	1.29	3.97
Madhya Pradesh	49.06	9.46	0.35	5.14
Madras	35.05	6.58	12.90	8.82
Orissa	37.75	11.79	5.64	0.51
Punjab	37.45	4.99	4.44	0.63
Uttar Pradesh	47.78	12.02	0.93	5.67
West Bengal	38.94	2.89	10.76	8.97
Hyderabad	41.84	11.37	20.88	0.08
Madhya Bharat	47.25	7.33	1.99	0.40
Mysore	46.89	8.58	0.19	15.24
Pepsu	29.22	1.76	2.45	1.49
Rajasthan	39.55	4.19	0.52	0.5
Saurashtra	63.81	3.65	0.84	3.19
Travancore Cochin	35.49	12.03	15.53	—
Vindhya Pradesh	29.52	18.66	—	16.38

The following conclusions could be drawn from the results of the first general elections shown in the tables given above :—

(i) There was no relation between the percentage of votes secured by a Party and the seats won by it. For the House of the People, the Congress secured 45.01% votes, but it won 74.43% seats. On the other hand, the Socialists secured 10.5% votes, but won only 2.5% seats. This is mostly the result of the single-member constituencies which give the biggest party a decided advantage over the other parties.

(ii) The Congress came out as the most popular party in the country. It won absolute majorities in most of the States and also at the Centre. In the remaining States, it was the biggest single Party.

(iii) In the House of the People, the Congress secured only 45.01% of the total votes cast, which showed that it was not backed by a majority of even those who voted. In the States, excepting Saurashtra, the Congress was again not backed by a majority of votes.

(iv) The percentage of votes actually cast for the whole of India was 44.63 for the House of the People and 45.30 for the State Assemblies. This percentage was not as good as in some of the European countries. But it was fairly creditable in the then existing conditions of India and showed that the masses in India were practically conscious, or at least, understand the value of a vote.

(v) The Communists were most popular in Hyderabad, Travancore-Cochin, Madras, and West Bengal where they secured 20.88, 15.53, 12.90 and 10.76 per cent votes respectively. In other States, they were very weak.

(vi) There was an appreciable number of Independent candidates, in spite of the outright condemnation of such candidates by Mr. Jawahar Lal Nehru during the time of the elections. In the House of the People, independent or unattached candidates secured as many as 41 seats.

A few other conclusions could also be drawn from the election results published by the Government. Voting in rural areas was 60%, against 40% in the towns. This showed that in rural areas the people took a keener interest in elections than the people of the towns. The entire election was conducted in a most peaceful manner. Out of the total of 2,25,000 polling stations in the whole of the country, the polling had to be postponed only at six booths because of disturbances.

Second General Elections : The second general elections started on the 24th February, 1957 and ended on the 9th of June, 1957. Some of the relevant facts about the elections are given below :—

(i) Number of persons who possessed the right of vote	... above 193 millions
(ii) No. of Constituencies	... 2,518
(iii) No. of Polling Stations	... 200,000
(iv) No. of Ballot Papers used	... 500 millions
(v) No. of Candidates who contested seats for the House of the People...	1,500
(vi) No. of Candidates who contested seats for State Assemblies	... 14,000
(vii) No. of persons who actually voted	... 114.5 millions
(viii) No. of Political Organisations which took part in elections	... 45

For the House of the People, elections were held to 494 seats. The Congress, the Praja Socialist Party, the Communist Party and the Jan Sangh were the only four political parties, which were granted recognition at the national level. The following Table gives the comparative strength of the various parties.

TABLE No. 5

House of the People

Party	Votes polled	Percentage	Seats contested	Seats won
Congress	5,40,56,646	46.5	483	366
P. S. P.	1,66,59,225	10.0	175	18
C. P. I.	1,44,47,345	9.8	115	29
Jan Sangh	67,31,098	5.7	103	4
Others	3,05,96,260	28.0	580	71

P. S.—Attention is invited to Table No. 2 in this Chapter for the corresponding figures for 1952 Elections.

For the State Assemblies, the Congress, the P. S. P, the Communist Party and the Jan Sangh secured 42.20, 10.10, 8.87 and 3.90 per cent of votes respectively. The strength of the various parties in the State Assemblies is given below :

TABLE No. 6

State Assemblies

States	Total seats	Congress		P. S. P.		Communist		Other parties	
		A	B	A	B	A	B	A	B
Andhra Pradesh	311	311	215(4)	28	2	62	36	153	48
Assam	108	101	71(4)	36	8	22	4	147	24(2)
Bihar	318	312	210	220	31	61	7	575	70
Bombay	396	374	232	104	36	35	18	492	106
Kerala	126	124	43	62	9	103	60	69	14
Madhya Pradesh	288	288	232(2)	149	12	24	2	559	42
Madras	205	200	151(3)	22	2	53	4	504	48
Mysore	208	208	150	87	18	18	2	232	38
Orissa	140	98	56(1)	40	11	31	9	169	64
Punjab	154	142	120	11	1	59	6	236	27
Rajasthan	176	176	119	25	1	24	1	262	55
Uttar Pradesh	430	430	286	256	44	90	9	624	91
West Bengal	252	247	152	64	21	90	43	438	33

A=No. of contestants.

B=Seats won including unopposed returns which are given in brackets.

The facts and figures contained in the Tables are self explanatory. The second general elections were as peaceful as the first. The peaceful conduct of the general elections testifies that an average Indian is peace loving at heart, realises the advantages of democracy and knows that it is better to govern the country by counting heads, rather than, by breaking heads.

CHAPTER XLVII

POLITICAL PARTIES IN INDIA

A political party is a group of persons who have agreed to work together on the basis of some common political principles and seek to gain control over the machinery of the government in order to give effect to those principles. They perform many useful functions. Through the political parties, people govern themselves. Men of similar ideas are enabled to work together. They evolve general policies for running the government, which appear in the form of election manifestos. In this manner, a voter can know in advance, what type of government he will get, by voting for the candidate of a particular party. Parties explain their programme to the masses and thus spread political consciousness. They are much more fitted to perform the difficult task of nominating the right type of candidates for the legislature than the general public. Parties help poor, deserving and election-shy candidates and bring them into the legislature. The majority party forms the government and runs it in accordance with its election manifesto. The minority forms the Opposition and compels the government to be cautious and careful in discharge of its duties. The existence of the Opposition is considered so essential in a parliamentary form of government that in England the leader of the Opposition is paid a regular salary by the Government.

One-party government means almost a dictatorship because there is no Opposition. This was the case in the Fascist Italy and the Nazi Germany. So is in Russia. At least two good parties are necessary for the success of a democracy. Too many parties make the government unstable as is the case in France.

Indian National Congress : The largest and the most well-organised political party in India is the Indian National Congress. Its history and various stages of development have already been described in the foregoing pages.

The Indian National Congress stands for the following principles :

(i) *Ideal of Socialist Co-operative Commonwealth :* In September, 1957, the objective of the Congress was stated to be "the well-being and advancement of the people of India and the establishment in India by peaceful and legitimate means of a Socialist Co-operative Commonwealth based on equality of opportunity and of political, economic and social rights and aiming

at world peace and fellowship". The word 'socialist' was newly added. But there is nothing new in this goal. All along, the Congress has professed some of the basic principles of socialism. The addition of the word is, however, significant. Evidently, the Congress is committed to lay more emphasis on the socialist side of its programme. A step in this direction was taken by the Congress in its Nagpur Session, held in 1959, when the party committed itself to collective farming in agriculture, State trading in food grains and ceiling on agricultural land. The nationalisation of the Imperial Bank and Life Insurance Companies and the enormous increase in the public sector are also steps in that direction.

In practice, however, mixed-economy, rather than unadulterated socialism, appears to be still the goal. Capitalism is decried, but collectivism is not accepted as the goal. The Congress really stands for blending the two systems. The importance of the public sector is emphasised, but the need for private enterprise is also admitted. Vital and key industries are to be owned and administered by the State as far as practicable, but scope is to be left for individual enterprise. The private enterprise and capital are necessarily to play a subordinate role to State capital and State enterprise. All the important rights of the labour have been recognised. The Congress stands for improving the lot of the agriculturists by abolishing the Zamindari system and all other intermediaries between the State and the actual tiller of the soil. The country is to be industrialised as much and as early as possible to increase national wealth and thus to raise the standard of living of the common man. But at the same time, due regard is to be paid to the cottage industries. Maximum production, full employment and socio-economic justice are aimed at. Taxing the rich for an equitable distribution of wealth, deficit financing and dependence on foreign loans is regarded necessary in the present conditions of India to carry out the above objective. Because of the adherence of the Congress to the principles of mixed economy in practice, the Congress is dubbed as capitalist in some quarters and communistic in others.

(ii) *Ideal of a Secular State*: The Congress has pinned its faith to the ideal of a Secular State, which has been enshrined in the Constitution. We have dealt with its implications elsewhere in detail. Such an ideal is necessary to ensure confidence in minorities to develop good relations with Pakistan and is in keeping with the present-day notions of the progressive countries of the world.

(iii) *Peaceful and constitutional means*: Before Independence, the Congress remained wedded to peaceful methods, but it freely adopted unconstitutional means for achieving Swaraj. In future, the Congress will use only peaceful and constitutional methods. This is because, in a democratic set up, change in government is

possible by peaceful and constitutional means. This is not the case with some Parties of the Left in India, who advocate violent and unconstitutional means for achieving their ends.

(iv) *International peace* : The foreign policy of the Congress aims at the achievement of international peace. The Party declares full faith in the U. N. O. The present race for armaments is condemned. The Congress is not to take sides in the present struggle for supremacy between the American and the Russian blocs. Its neutrality does not mean that it will not raise its voice on the side of the oppressed countries and will not condemn an aggressor and a disruptor of the world peace. The Congress stands for the freedom of all Asian and African countries. The foreign policy of the Congress is at present summed up in five principles which have been popularly called *Panch Shila*. These principles are : (i) mutual respect for each other's territorial integrity and sovereignty ; (ii) mutual non-aggression ; (iii) non-interference in each other's internal affairs for any reasons of an economic, political, or ideological character ; (iv) equality and mutual benefit ; and (v) peaceful co-existence. These principles had been accepted by China, Yugoslavia, Egypt, Russia and many other countries of the East and West.

The Congress obtained a thumping majority in both the general elections. The success of the Congress during the general elections was generally attributed to the dynamic personality of Mr. Jawahar Lal Nehru, the Prime Minister. This was also because of a horde of experienced and tried workers at its command, its tremendous sacrifices in the past in the cause of the country's freedom and its country-wide organisation. The absence of any powerful Opposition Party also contributed to its great success.

Socialist Party of India : This Party was formed in 1934 under the inspiration of Acharya Narendra Dev and Jai Prakash Narain and was originally named the Congress Socialist Party. It differed from the Congress mainly on two points. Firstly, the Party stood for Complete Independence. Secondly, it wanted the Congress to adopt a purely socialist programme. The Congress Socialist Party and its leaders played a glorious part in the Quit India Movement and the Party was banned along with the Congress. In 1946, when the Congress came into power and formed the Interim Government, the ban on the Congress Socialist Party was removed. In 1947, the Party began to reorganise itself. Jai Parkash Narain resigned from the membership of the Congress Working Committee. The word 'Congress' was dropped and the Party was re-named as simply the Socialist Party of India.

According to the election manifesto drawn by the Party in 1951, the Party stood for the abolition of *Zamindari* without Compensation. The maximum holding per family was proposed as 30

acres of of land. All land above this maximum was to be distributed among poor peasants and agriculturists. In agriculture, co-operatives, and collective farms were to be encouraged. Some industries were to be socialised at once. Nationalization of Banking and Insurance was considered necessary. Social ownership of key industries like iron and steel, power, mines, etc., was regarded as essential for planned economic development. The rest of the industries were to be in private hands. The whole industrial process was to be planned. Workers were to get voice in the running of industry. Handicrafts were to be encouraged. To reduce huge discrepancies of wealth, the State was to abolish all the privileges of the Princes. Taxation and capital levies were to be introduced. Income was to be brought within the range of Rs. 100/- and Rs. 1000/- per month. These limits were to be raised with the increase of the national wealth.

India's foreign Policy was to be based on abstention from disputes between the American and the Soviet camps. Colonialism in any shape or form was to be discouraged. Freedom movements in countries of Asia and Africa were to be encouraged. The Party sympathised with socialist movements in other countries.

The Party fared very badly in the first general elections. The General Secretary of the Party in his report submitted to the Party Convention in 1952, attributed the rout of the Party in the elections to the single-member constituencies, lack of adequate funds, the limited propaganda in certain areas, the absence of pockets of strength and premature confidence amongst the workers due to victories in earlier by-elections. Mr. Jawahar Lal Nehru, however, regarded the programme of the Party as impracticable.

In 1952, the Party was amalgamated with K. M. P. P. and ceased to exist separately. As a result, the present P. S. P. was formed. In 1955, Dr. Ram Manohar Lohia, along with his followers, left P. S. P. and formed a new Party with the old name, viz., the Socialist Party of India.

Praja Socialist Party : In 1951, the Kisan Mazdoor Praja Party was formed by Acharya Kirpalani because of his dis-satisfaction with the policy and work of the Indian National Congress. In February 1952, Mr. Jai Parkash Narain, the leader of the Socialist Party, welcomed alliances with smaller parties like the Kisan Mazdoor Praja Party, the Forward Block and Revolutionary Parties of the Left. As a result of this, the K. M. P. P. was completely amalgamated with the Socialist Party. A common programme was drawn on the basis of which Acharya Kirpalani, J. P. Narain, Asoka Mehta and Dr. Ram Manohar Lohia agreed to work together. For a time, it was generally believed that the present Praja Socialist Party was the only Party which had got any chance of becoming a potential Opposition to the Congress in future.

But the work of the Party is rather discouraging. Factions within the Party made J. P. Narain sore and he stopped taking active interest in its affairs and is now mainly concentrating on the Bhoodan Movement of Vinoba Bhave. As already stated, Dr. Ram Manohar Lohia and his followers left the Party in 1955 and formed a separate Party called the Socialist Party of India. The future prospects of the Party appear to be bleak again. In the second general elections, the Party won only 18 seats out of 175 that were contested for the House of the People.

Communist Party : The Communist Party was formed in 1934. It derived its inspiration from the Communist Party of U. S. S. R. and therefore remained a suspect in the eyes of the Government. The Party remained under a ban which was lifted in 1943, when Russia joined the War and the Party declared it to be a "People's War." The inglorious role played by the Party during the Quit India Movement has already been described. When India attained freedom, the Party declared its full support for the National Government, but its working does not show any real change in its designs.

In the constitution of the Party, its aim was described to be, "the organisation of the toiling masses in the struggle for victorious anti-imperialist and agrarian revolution, for complete national independence, for the establishment of people's democratic State led by working class for the realisation of the dictatorship of the proletariat and building up of socialism according to the teachings of Marxism-Leninism." The Party stands for confiscation and nationalisation of all foreign capital. All land is to be confiscated from private owners without compensation. All debts of the peasants and small artisans to money-lenders are to be cancelled. All inter-course with the United States of America must stop. The Party, if successful, will break all connection with the British Empire, expel British officers from armed forces, confiscate and nationalise all British capital, develop national industries, with the aid of confiscated foreign capital and by enlisting co-operation of private industrialists, guarantee living wage to workers, and introduce free and compulsory primary education.

Till recently, revolutionary method was commonly adopted. But now, the Party alleges that possibility of 'peaceful ways to socialism' is a true reality. The parliamentary form of government, existence of different parties and place of opposition is said to be consistent with the creed of the Party.

In the first general elections, the Party secured 26 seats in the House of the People and won 5% votes. In the second general elections, it secured 29 seats and 9.8% votes, which shows an increase in popularity. The Party was able to form its own government in Kerala after the second general elections, which was superseded in the middle of 1959 by the use of emergency

provisions. The Party has been charged for not being faithful to the Constitution and for attempting to subvert democratic processes. The recent claim to Indian territory by the Chinese, occupation of some Indian territory and the shooting of 9 Indian soldiers by them in October, 1959, have found the Party wanting as in 1942. Any forthright condemnation of Chinese action is not available. The Party was freely being described as anti-national and seditious. After the Kerala experiment and the attitude of the Party to Indo-Chinese dispute, many in India have come to the conviction that so long as the Party continues to have extra-territorial loyalties it is dangerous to give it a long rope. Moreover, the Communist creed is inherently inconsistent with democracy. The change of faith to peaceful method etc. is said to be a device born of expediency and a strategy.

The future of Communism in India : Sir Radhakrishnan once declared that communism had no future in India because of our faith in God, the importance that we attached to spiritual values and our belief in non-violent way of life. Mr. C. Rajagopalachari declared on May 23, 1953, "The truth is that there is no future for communism in India. There is too much reverence and proper respect for moral values in India for communism to make headway.....Be it as it may, communism is down and out in India." The chief defect of the Party is its extra-territorial allegiance. Moreover, communism is inherently inconsistent with democracy. The policy of the Party is Utopian and divorced from all present day realities of the Indian situation. The Party is openly accused of receiving regular financial aid from Russia. The visit of Mr. Nehru to Russia, the Indo-Russian Declaration that Russia would no longer interfere in the internal affairs of other countries even on ideological basis, the recent visit of the Russian leaders to India and their full-throated support for the Nehru Policy and the dissolution of Cominform led the Party to allege faith in parliamentary form of government and peaceful methods. If the Congress Government is able to tackle successfully the problems of hunger and ignorance, the Party may have no future. But if the masses remain poor, hungry, without houses and illiterate, the Party will have fertile fields to exploit. It is for the Government to meet its challenge.

Swatantra Party : The Swatantra Party of India was formed in the middle of the year 1959 as a reaction against socialist tendencies of the Indian National Congress by some ex-Congressmen of standing like C. Rajagopalachari, and N. G. Ranga. K. M. Munshi, M. R. Masani, S. K. D. Paliwal and V. P. Menon are some of its active supporters. The immediate provocation for the formation of the party was, however, the adoption of Nagpur resolution by the Congress.

The principles of the Party are as follows : (i) The Party stands for the maximum freedom for the individual and minimum

interference by the State, whereas the Congress is wedded to giving increasing role to the State as a social-service agency. (ii) The Party holds that a sense of stability and incentive for individual effort can be restored only by strict adherence to the fundamental rights and guarantees specified in the Constitution as originally adopted in respect of freedom of property, trade and occupation and just compensation for any property compulsorily acquired by the State for public purposes. Such an attitude will require an amendment of Article 31 of the Constitution which leaves it to Parliament to give whatever compensation it deems desirable for private property compulsorily acquired for public purposes which is again in keeping with the present policy of the Congress. (iii) The Party holds that the paramount need of the country is to increase food production and this can best be attained through the self-employed peasant proprietor. The party is thus opposed to the principles of collective farming in agriculture and state trading in food grains which have been accepted by the Congress at Nagpur. (iv) In the sphere of industry, the party believes in incentives for higher production and expansion inherent in competitive enterprise. It stands for the restriction of State enterprise to heavy industries and the starting of those pioneer enterprises which are difficult for private initiative. The party is opposed to the State entering into the field of trade and disturbing the free procedures of distribution and introducing official management. This again is opposed to the policy of the Congress which stands for the subordination of private sector to public sector. (v) The Party is opposed to the programme of industrial and other developments in the country based on high taxation, deficit financing and foreign loans which are freely adopted by the Congress. (vi) The Party believes that the State will best serve the nation by limiting its own regulatory function to the prevention and punishment of anti-social activities. This is swearing by the orthodox type of individualism, which is frankly opposed by the Congress.

In short, the Swatantra Party stands for the policy of individualism and *lassiez faire* and is thus, diametrically, opposed to the socialist ideal of the Congress. Mr. C. Rajagopalachari has appealed to the Congress to change its name into the Socialist Party of India to reveal its true character. One may ask Mr. Rajagopalachari to change the name of the Swatantra party to that of the Conservative Party of India to show its true colour. The Congress has dubbed the Swatantra Party as reactionary and the Swatantra Party accuses the Congress of having become 'red' or totalitarian. "But the actual distinction is much less melodramatic and is broadly of the kind which distinguishes major rival political parties from each other in all those communities where democratic ways of life are permitted". Broadly speaking, if the Congress can be compared to the Labour Party of England, the Swatantra Party of India is like their Conservative Party.

The success of Swatantra Party will depend upon its work and peoples' choice. There is, however, a feeling that the Swatantra Party may provide India with the chance of having an effective opposition in the Centre as well as in some of the States because, it is for the first time, after Independence, that the Swatantra Party has evolved a programme which may provide a rallying point for all rightist elements in the country like big industrialists, capitalists, bankers, landlords and other propertied classes to combine. It is felt by some that the Swatantra Party would provide a clear alternative to the policies of the ruling party by putting the individual rights in the centre of the picture against the ideals of socialism or state capitalism. It is also felt that all existing progressive parties like the Socialists and Praja Socialists adhered to socialism of one brand or another. These Socialists and could not, by their very nature, function as an effective opposition to the Congress Government "because ideologically, they are merely satellites of the ruling party". The most they could do was to egg the Government on to go faster with collectivism.

Communal Parties : A peculiarity of the Indian Parties is the existence of a large number of Communal Parties in this country. The Muslim League of the united India was formed in 1906 to protect the interests of Muslims and to act as a counter-blast to the Congress. With the introduction of communal electorates, Muslims acquired a vested interests in religious politics. Soon after, some Hindus began to feel that the interests of the Hindus were not safe in the hands of the Congress and they began to set up Hindu communal organisations. Other minorities started their own organisations to reap benefits for their own communities on the lines of Muslims. Communalism proved the greatest curse of India and the country had to be divided on religious lines—a part going to Muslims as Pakistan. Even in the divided India, such Parties continue to exist.

Hindu Maha Sabha : The aims and objects of Hindu Maha Sabha as announced on May 7, 1950 are "the protection and promotion of all that contributes to the advancement, strength and glory of the Hindu *Rashtra*, Hindu culture, and Hindu polity and as a means to that end to achieve Hindu Raj and to re-establish the integrity of the State of Bharat by constitutional means". The Party does not concede equality of treatment to the Muslim language, culture or religion. It has stood for the adoption of Hindi with Nagri script as the National Language of India from the very beginning.

On the wake of the last general elections, the Sabha adopted an election manifesto which added some more items to its objectives, i.e., (a) to amend the Constitution in order to bring it in consonance with ancient Indian traditions ; (b) to leave the Commonwealth ; (c) to ensure that the foreign policy of India will be guided by the

principle of enlightened self-interest and reciprocity towards Pakistan; (d) to make military education compulsory; (e) to recognise the sanctity of private property; and (f) to guarantee the right of inheritance. The Hindu Maha Sabha promised to give priority to rehabilitation of refugees and would even levy a special tax, if necessary, for the purpose. It guarantees compensation to all evacuees who have left their property in Pakistan and will settle the problem of evacuees' property at the Government level speedily.

In the last general elections, the Sabha fared very badly and its candidates were mostly defeated. In the House of the People, it acquired only four seats. In the State Assemblies, it captured only 20 seats out of 206 which were contested. This miserable showing of the Sabha is an index to its future. It is not understandable how *Akhand-Bharat* can be achieved by constitutional means. It is highly dangerous to depart from the secular principles. Any religious basis given to our polity, will sink us to the ethics of medieval ages. During the freedom movement, the Sabha attracted persons who wanted to play safe politics. Now that India is free, the Sabha comes out as the friend of the Hindus. It still insists that the interests of the Hindus are not safe in the hands of the Congress.

Rashtriya Swayam Sewak Sangh (R. S. S.): The Sangh was formed in 1925. It was intended to be a sword-arm of the Hindu society. It is a movement for Hindu Revivalism. It stands for Hindi, Hindu and Hindustan. It is opposed to the idea of secular State. Its members are knit together in rigid discipline and take regular semi-military training. In the first general elections, the Sangh did not put up candidates of its own, although it supported the nominees of Bhartiya Jan Sangh. **Bhartiya Jan Sangh**—This Sangh is an off-shoot of the R.S.S. It came into existence in 1951, in order to fight the first general elections under the new Constitution, but failed to achieve any notable success. **Ram Rajya Parishad**—It is another communal organisation of Hindus and was formed on the eve of the last general elections. Its fate in the elections was no better than that of the Bhartiya Jan Sangh. **Jamiat-ul-Ulema-Hind**—It is an organisation of Muslims and has always supported the political activities of the Indian National Congress. The Jamiat has stopped taking any part in political activities and is mainly concentrating on social work. **Union Muslim League**—It is the successor of the once powerful Muslim League. It stands for the protection of the interests of Muslims. After the introduction of joint electorate and the acceptance of the secular principle, there is not much room for such an organisation. The Party has still got some hot-headed members, who are religious fanatics and possess the old Muslim-League mentality. A Muslim convention was held at Aligarh, where disruptive speeches were delivered and the Government had to take action to curb such tendencies in future.

Shia Political Conference : It is another organisation of Muslims, which supports national policies and programmes.

Akali Party : The Sikhs are divided into three parts. One section is with the Congress and is usually described as the Nationalist Sikhs. There is another section, which does not take interest in politics. There is yet another part, whose leader is Master Tara Singh and is known as Akali Party. Some Akalis believe that just as Hindus have got Hindustan, and Muslims have Pakistan as their home-land, Sikhs should also be conceded Sikhistan for themselves.

Scheduled Castes Federation : It is a Party of the Scheduled Castes or Harijans and speaks for their rights. It was established by Dr. B.R. Ambedkar. This group generates separatist tendencies.

Depressed Classes League or the Harijan League : Its leader is Jagjivan Ram, the present Labour Minister of India. This group possesses a nationalist outlook and gives general support to the policies of the Congress towards the Scheduled Castes.

FEATURES OF THE PARTY SYSTEM

The prominent features, of the Indian Party System are : (1) absence of an effective opposition ; (2) multiplicity of parties ; and (3) the communal nature of some parties.

(1) Absence of an effective Opposition : There is no effective or potential Opposition to the Congress Government either in the Union Parliament or in the State Legislatures. It is generally admitted that the Opposition is a vital necessity in a democratic form of government, and much more in a parliamentary government like ours. Lack of Opposition is, probably, the reason why the Congress Ministers in almost every State, can afford to indulge in mutual intrigues against one another for personal advantages. Some critics even believe that India is in the grip of a Congress dictatorship. Although we admit the utility of an effective Opposition in a democratic set up, it is wrong to compare the Congress rule with the Fascist rule in Italy or the Nazi rule in Germany. In those countries, Opposition was not allowed to exist at all. No other Party could contest elections against the official Party. The slightest criticism of the Party in power was treated as treason ; but this is not the case in India. It is not the numerical strength of the Opposition that makes a country democratic ; but the existence of rights to publicly criticise the Party in power, to form Opposition outside and inside the Legislature and to overthrow the government by constitutional means. Majority governments do not govern with the permission of the minorities. That would confuse responsibility. The Labour Party in England with its large membership has very little effect on the policies of the Conservative Government of Mr. Macmillan.

The emergence of an effective Opposition in India, in the words of K. Santhanam, is "bound to take a considerable time. It is not easy to build a (strong) political party. Like industry, it requires political capital which has to be acquired through long years of service and propaganda. Leadership, funds and enthusiastic workers are as necessary as programmes and slogans, which will catch the imagination of the people. New parties will be subject to the disease of factionalism, even more than the Congress." But the earlier India evolves an effective Opposition, the better it is for the success of the parliamentary democracy in India.

(2) Multiplicity of Parties : From the large number of Parties existing at present, many writers infer that we are going the French way and will soon have a multiple-party system with its curse of unstable government. No doubt Indians are divided by many issues of caste, religion, language, localism and ideologies, etc., which provide good material for the growth of numerous parties. But it is doubtful, if the parties elected on the basis of other than socio-economic issues will ever attain threatening proportion or strength, so as to be able to influence the life of the Government. Of course, it will be in the best interests of the country, if "Indian politics centres round two great political parties as in U. K., U.S.A., Canada and Australia. This will probably be the case in the long run. Territorial representation and single-member constituencies were introduced for the same purpose. Splinter parties will get little chance to influence the Government and the voter will soon realise that the only method of changing the existing Government is to concentrate on one of the Opposition parties. Another factor which will pull India in the same direction is the fact that the Congress is dominating the stage like a Colossus. Opposition parties look pigmies in its presence. A sheer necessity will force them to come together." The formation of Praja Socialist Party, by the amalgamation of two former Opposition Parties was a sign of that tendency.

(3) The Communal nature of some Parties : We agree with K. Santhanam that Communal Parties "in the long run, have no future whatsoever." This is especially because a majority of the Hindus cannot be integrated on any religious basis. The danger from this quarter is not over. It is wrong to underestimate the influence of R.S.S. on some of the younger minds among the Hindus. The Party works on the familiar lines adopted by the Fascist, the Nazi and the Communist Parties with its rigid discipline and emphasis on quasi-military training. There is clearly a need for watch over its activities, if secularism is to succeed. Similar is the position of the Akalis.

PART VII



CHAPTER XLVIII

SOME LEADERS OF MODERN INDIA

Raja Ram Mohan Roy

Raja Ram Mohan Roy has been variously described as the 'Herald of New Age,' the 'Father of Indian Renaissance' and the 'Prophet of Indian Nationalism.' Ram Mohan was the recipient of these unique epithets because he was the pioneer of almost all the religious, social and political reforms which were brought about during the 19th and the 20th centuries.

Raja Ram Mohan Roy was a great religious reformer. Before his days, the Hindu Society was in a decadent condition. Many evils had crept into it. It had become the victim of an endless chain of superstitions, rituals and dogmas. Islam and Christianity were progressing on its ruins. Raja was the first reformer, who tried to rid the Hindu society of its glaring weaknesses. He vehemently criticized all the harmful rites and rituals which were observed by the Hindus of his times. He was against idol worship and raised his powerful voice against the caste system. He was the first to point out the evils of untouchability as observed by the caste Hindus. In 1828, he founded the Brahmo Samaj—a cosmopolitan religion, which preached the gospels of religious toleration and basic unanimity in all religions. The Brahmo Samaj represented a synthesis of the good points of all the religions with which Raja Ram Mohan Roy was familiar. It was based on the "monotheism of Islam, the ethics of Christianity and the philosophy of Upanishads." Ram Mohan Roy was also a great social reformer. He directed a vigorous attack against the practice of sati, as a result of which the evil custom was declared unlawful in 1829 by Lord Bentinck. Roy stood for the emancipation of women and would give them equal rights with men. He decried the systems of early marriage, enforced widowhood, polygamy and concubinage.

Raja Ram Mohan Roy was a great admirer of the Western system of education and culture. He was the first Indian of importance to lend his whole-hearted support to the introduction of the Western system of education in India. It was his conviction that

the oriental systems of education were not adequate for meeting the needs of modern India. He gave his full support to the replacement of Persian by English as the official language of India in 1828. In political ideas, Raja Ram Mohan Roy was the first great liberal that the country has produced. He stood for liberty of thought and the freedom of press. He once organised a protest meeting against restrictions which were imposed by the Government on the freedom of the press in his times. In 1821, he started the first vernacular paper in India, *Sambadh Kaumudi*. The first press in India was also installed by him. He was a great lover of democracy and gave a public dinner in Calcutta, when constitutional monarchy was established in Spain. The success of French Revolution immensely pleased him. He advocated the separation of the Executive from the Judiciary. He was the first Indian to go abroad and thus to cross the sea, then called black waters, which was regarded as highly inauspicious in those days.

Raja Ram Mohan Roy believed that the British rule in India was a divine dispensation and was for India's good. He was the first Indian to emphasise the interdependence of religious, social, educational, and political progress. It was his firm conviction that the Indian society of his times was not fit to assume political responsibility. He believed that there must be advancement in religious, social, and educational spheres, before India could safely handle political freedom. He stood for the policy of gradual reforms in the Indian administrative system. There is no direct political work to the credit of Raja Ram Mohan Roy. But all that he did, had a tremendous indirect effect on the national movement of later days. By bringing about various religious, social and educational reforms, Raja Ram Mohan Roy prepared Indians for the political consciousness which followed. The soil which became fit to spout the seed of nationalism in 1885, was initially prepared by Raja Ram Mohan Roy and other socio-religious reformers of the 18th and the 19th centuries, who breathed new life in the Indian society by removing some of its weaknesses. It is in this sense that Ram Mohan is also called the Father of Indian Nationalism. Dr. Tagore gave expression to a patent truth, when he said that the Raja "inaugurated the modern age in India."

Swami Dayanand Saraswati

Swami Dayanand was also a great religious and social reformer. In 1875, he founded the Arya Samaj, which has proved a great religious, social and educational movement in India. Like Raja Ram Mohan Roy, Swami Dayanand was also responsible for bringing about many useful religious and social reforms in the Hindu society. But whereas Raja Ram Mohan Roy confined his religious and social activities to the intellegentsia, Swami Dyanand carried his message to the Indian masses. Whereas the Brahmo

Samaj was based on toleration and respect for other religions, the Arya Samaj made Hinduism militant and aggressive. Swami Dayanand not only emphasised the greatness of Hindu religion and Hindu scriptures, he also pointed out the superiority of Hindu religion to other religions like Islam and Christianity. Swami Dayanand was particularly fond of public disputations with orthodox Hindu, Muslim and Christian theologians—a practice which has remained popular with the Arya Samaj missionaries till recent years. Swami Dayanand was in favour of reclaiming to Hindu religion all those Hindus who had been converted to other religions in the past. He stood for *Shudhi i. e.*, conversions from other religions to Hindu religion.

The philosophy of Swami Dayanand and the principles of Arya Samaj are mostly found in *Satyaratha Prakash* written by Swami Dayanand himself. The Swami believed that Vedas, as interpreted by him, embodied the highest truth about the ancient Hindu religion and ethics. He believed in one God and was against idol worship. As a social reformer, Swami Dayanand carried crusade against early marriage, enforced widowhood and subordination of women to men. He was against caste system and its ugly off-shoot of untouchability. The doors of Arya Samaj were thrown open to the members of the Scheduled Castes. After the death of Swami Dayanand, the Arya Samaj became a great educational movement for boys as well as girls and established a chain of D. A. V. educational institutions all over the country, which made education available to the poorest sections of the Hindu society and imparted education in religious and patriotic settings.

Like Raja Ram Mohan Roy, the contribution of Swami Dayanand to national movement is also indirect. By bringing about many religious and social reforms and by spreading education Swami Dayanand and his followers of the Arya Samaj have prepared the Hindu Society for the spread of political consciousness. Swami Dayanand was a lover of *Swadeshi*. He stood for India and everything Indian. By pointing out the greatness of ancient Indian culture and Hindu religion, Swami Dayanand proved a great influence in the movement of Hindu Revivalism, which created faith in the minds of many middle-class Hindus in their ancient religion and culture. The Arya Samaj has given India an army of religious and social reformers, who are at heart essentially patriotic. The Arya Samaj is not a political body; yet it has always remained a suspect in the eyes of the Government during the British days. D. A. V. Colleges and Schools were often regarded as centres of sedition and breeding grounds for patriots and revolutionaries. It gave us leaders like Lala Lajpat Rai and Swami Shardhanand.



Allan Octavian Hume

A. O. Hume was one of the actual founders of the Indian National Congress. The circular inviting the chief public men of

India to the first session of the Congress was issued over the joint signatures of Hume and Surendra Nath Bonerjee. This is why he is reverently remembered as the Father of the Indian National Congress. He was the first General Secretary of the Congress and held that office with a rare distinction and devotion continuously up to 1907. He was the author of the famous open letter to the graduates of the Calcutta University published before the birth of the Congress, in which he had invited young men for public service in India to uplift the nation socially, economically and politically.

Hume was a friend of the British Empire, but was critical of the way in which India was being administered. He regarded Britain's connection with India for India's good but thought a radical change was essential in the attitude of the British Government towards Indians. He was firmly of the opinion that the British Government was not discharging adequately its responsibility towards India. It was his conviction that an organisation like the Congress was essential to bring into a healthy channel the prevailing resentment against the Government and to uplift the nation politically. The British authorities in India as well as in England gave full support to Hume in his efforts to start such an organisation because they thought it could serve as a true mirror of the saner public opinion in India. There is not a shadow of doubt that the motive of A.O. Hume for starting the Indian National Congress was all good. It is sometimes said that Hume started the Congress to save the British Rule in India. This is described as 'Save the Empire Theory' regarding the motive of Hume in establishing the Congress. It might also be in the mind of Hume that if such an association was started the British connection with India would remain cordial. But to suggest that Hume did it, only to perpetuate the British rule in India is sheer ingratitude, to say the least. Hume was a friend of the poor. His heart bled at the sight of the stark poverty which prevailed in India. He was a lover of liberty and freedom. His views about the utility of the British connection to India were no worse than those of the multitude of the Congress leaders who guided the destinies of the Congress till 1916.

A.O. Hume was a Scotchman. He was a member of the Indian Civil Service. From the very beginning of his career, he gave ample proof of his desire to serve India and Indians. Even as a District Officer, he laboured hard to bring about many reforms in the Indian administration, which he thought would result in the good of Indians. He espoused "the cause of popular education, police reform, the liquor traffic, the vernacular press, the juvenile reformatories and other domestic requirements."¹ He encouraged the employment of native agency for the promotion of education. He was in favour of depriving the police officers of all judicial functions. He regarded the revenue of *Abkari* "as the wages of sin".

1. Quoted in : *The History of Indian National Congress*, Vol. 1, p. 77.

In 1859, he gave help in starting vernacular paper called the *People's Friend*. He held the "civil courts in rural districts directly responsible for the bondage of cultivators to the money-lender," and recommended that "rural debt cases should be disposed of summarily and finally on the spot by selected Indians of known probity and intelligence." The radical nature of this reform will not go unappreciated, when one realizes that this is exactly what the present Constitution endeavours to achieve by advising the establishing of *Panchayats* in the villages of India. In 1879, he prepared a scheme to give relief to the ryots of Deccan.

Mr. Hume was a Secretary to the Government of India from 1870 to 1879—a position from which he was eventually ousted for his independent views. He was offered Lieutenant Governorship, which he declined to accept because he thought he would not be able to serve the people of India in that capacity. He was prepared to become the Home Secretary, but the British Government would not entrust that responsible post to him because of his popular interests. Hume retired in 1882 and from 1885 yoked himself in the service of the Indian National Congress. His efforts for reforms as a civil servant, and his later record as the founder of the Congress and its General Secretary for no less than 22 years provided an ample testimony to show that he was a noble and real friend of India.

Sir William Wedderburn

Sir Wedderburn was also a member of I.C.S. like A.O. Hume. During his tenure of service in India, he was greatly loved and respected by Indians. But his main work in the cause of the National Movement started after he had left the Service and went back to settle in England. We already know that one of the main items of the programme of the early Congress was to acquaint the British public regarding the political demands of Indians. Wedderburn was the heart and soul of this work. For years together, he was the chairman of the British Congress Committee, which was entrusted with that task by the Congress. The Congress spent Rs. 10,000 to Rs. 50,000 annually for the work of this Committee, to which expenditure Mr. Wedderburn added almost his entire annual Indian pension of £ 1,000 for no less than 29 years! For seven years, he was a member of the British Parliament and invariably supported the cause of India in that capacity. He presided over the Congress twice—in Bombay (1889) and at Allahabad (1910). In 1910, he came all the way from England "in order to remove the official wedge so astutely driven between the Hindus and Muslims, and also, if possible, to heal the breach made at Surat between Moderates and Extremists",¹ which greatly alarmed the British bureaucracy in India. He gave his time as well as money to the service of India. He aptly described himself as the 'hereditary servant of India'. Mr. S. N.

1. Zacharias : *Renascent India*, p. 161.

Banerjea found in Wedderburn "a truly Indian patriot in the garb of an English official". Mr. Gokhale expressed Indian's gratitude to him in the following words which can hardly be bettered. "The picture of this great and venerable *rishi* of modern times is a picture that is too ennobling, too beautiful, too inspiring for words : it is a picture to dwell upon lovingly and reverentially, and it is a picture to contemplate in silence."

Dadabhai Naoroji

The foremost name amongst the earliest leaders of National Movement in India is undoubtedly that of Dadabhai Naoroji. For no less than 61 years, he served the nation—40 years before the birth of the Congress and 21 years after! Dadabhai Naoroji is affectionately remembered as the Grand Old Man of India. His services to India are beautifully described by Mr. Chintamani, who writes, "For 61 long years, in England and in India, by day and by night, in circumstances favourable and adverse, in the face of discouragements which would have broken the heart of a smaller man, Dadabhai Naoroji served the Motherland with undeviating purpose, with complete selflessness and with vitality of faith which put to shame most young men.....Withal, he was the greatest of souls, and the most charitable in judgment and never made a personal enemy. In respect equally of the highest personal character and the great public services, Dadabhai Naoroji was the loftiest ideal his countrymen could set before themselves respectively to follow at a distance."¹

Dadabhai Naoroji was a confirmed Moderate and believed in the British sense of justice. He regarded British connection for India's good and was a great admirer of the Western culture. He believed in gradual reforms and the constitutional method. He was a friend of the British Empire. "But in the later part of his career continued disappointments drove him in spite of himself, to employ language marked by great and increasing bitterness."²

Dadabhai had the rare distinction of presiding over the annual sessions of the Congress thrice, i.e., in 1886, 1893 and 1906. He had permanently settled in England and was the first Indian to be elected as a member of the British House of Commons. His second election to the presidency of the Congress came as an appreciation of his election to the House of Commons. He used to come all the way from England to preside over the Congress.

The 1906 session is a very important session in the history of the Congress. The Partition of Bengal had swelled the ranks

1. Chintamani : Indian Politics since the Mutiny, p. 36.

2. Ibid, p. 36.

of the Extremists in the Congress. Their vigorous agitation against the Partition had made them popular. It was feared that there would be a rupture between the Moderates and the Extremists at 1906 session over the election of the President. Dadabhai was so much respected by both the wings that when his name was suggested, there was no objection from the side of the Extremists. When Dadabhai came to preside over the session, his mind had already become bitter against the Government. He was also not happy over the way the British Government rode rough shod over the wishes of the people of India in the matter of partitioning Bengal. Lala Lajpat Rai had just returned from England to tell his countrymen before the session that freedom would come only through their own strength. Gokhale was also critical of the Bengal Partition. It was in this background that 1906 session was held. Dadabhai caught the spirit of the times and declared in his presidential address that "Self-Government or Swaraj like that of United Kingdom or the Colonies was the goal of India" and thus adopted Tilak's famous slogan and made it a battle-cry of the Indian patriots for years to follow. So far the Congress had asked only for reforms in the Indian administration in its annual sessions. It was for the first time that the national goal was given 'habitation and a name.' It was again under Dadabhai's presidency that three radical items of action were adopted by the Congress. Firstly, the boycott movement inaugurated in Bengal by way of protest against the Partition of the Province was declared to be legitimate. Secondly, the Congress gave its most cordial support to the Swadeshi Movement and called upon the people of the country to labour for its success by making earnest and sustained efforts to promote the growth of indigenous industries and to stimulate the production of indigenous articles by giving them preference over imported commodities, even at some sacrifice. Thirdly, the Congress advised the people all over the country earnestly to take up the question of national education for both boys and girls and to organise a system of education, literary, scientific and technical suited to the requirements of the country on national lines under national control. Thus the four main planks in the programme of the Extremists, as emerged out of the agitation against the Bengal Partition, were officially adopted by the Congress. The adoption of these items by the Congress under his presidency shows the change that Dadabhai had undergone in his attitude towards the British Government.

It was a favourite topic with Dadabhai Naoroji to explain in his writings as well as speeches the causes of India's poverty, which is also the main thesis of his famous book, 'Poverty and Un-British Rule in India'. Day in and day out, he pointed out to Indians and Englishmen that the constant drain of wealth from India to England was impoverishing India and that India was being mercilessly exploited economically by the British people.

What he wrote to an American friend on this topic is reproduced in an earlier Chapter¹, and show how bitter and biting he was while dwelling over this aspect of the British administration. At the 1906 session, "Dadabhai pointed out how since 1893-94, the population grew 14 per cent but the net Government administrative expenditure 16 per cent, while since 1884-85, the population grew 18 per cent and the expenditure 70 per cent. The military expenditure alone arose from Rs. 17 to 32 crores, 7 crores being spent in England. The recommendations of the Welby Commission in favour of an apportionment of the military expenditure between England and India were honoured in letter but disregarded in spirit, for a certain contribution was made by England, but the pay of the English soldiers was raised so as to take away thrice the contribution made."² His book deserves to be read by every patriot of India and especially by those, who are to make a special study of the National Movement.

Surendra Nath Banerjea

Surendra Nath Banerjea was one of the two original founders of the Indian National Congress. As already stated in an other context, the circular convening the first session of the Indian National Congress was issued to various public men in India over his joint signature with A. O. Hume. He was the first Indian to qualify for the I. C. S. by appearing in the open competitive examination in London in 1869. The story as to how he was eventually dismissed from the service has already been narrated.³ In 1876 he founded the Indian Association to canalise the resentment of Indians against the British Government. Much before the birth of the Congress, he made a tour of the whole of India to tell his countrymen how Indians were systematically kept out of the higher jobs and how much necessary it was to evolve an All-India platform for the redress of such grievances. He was one of the greatest orators India has produced. He is described as the Father of the Indian unrest. Sir Henry Cotton wrote about him, "From Multan to Chittagong, Surendranath Banerjea could, by the power of his tongue, raise a revolt and suppress a rebellion." It is said, "he was to India, what Demosthenes was to Greece and Cicero was to Italy."

S. N. Banerjea was one of the leaders of the Moderate school. He had no touch with the masses of India. In 1895, when he presided over the Congress Session, he told the British Government that there was no responsible public man in India who claimed political power for the common man. In 1902, he presided again over the Congress Session at Ahmedabad and was still moderate

1. See p. 5.

2. Dr. P. Sitaramayya: *The History of National Congress*, Vol. I, p. 84.

3. See p. 37.

in views. The Partition of Bengal made him bitter and he advocated the boycott of British goods as a retaliation against the Government.

S. N. Banerjea was a great educationist. After his dismissal from the I. C. S., he joined the staff of the Metropolitan College, Calcutta. Later on, he started his own school, which became the Ripon College, Calcutta. He also worked as a journalist for some years.

The Montford Reforms brought a complete rupture between him and the Congress. He stood for the wholesale acceptance of the Reforms and left the Congress in 1918, and organised the National Liberal Federation, which was secretly blessed by Mr. Montagu, the Secretary of State, during his stay in India during 1917 and 1918. He became a Minister in Bengal under Dyarchy and was later Knighted by the British Government. He tried his best to make Dyarchy a success. He wrote his autobiography under the name, 'A Nation in the Making,' which narrates his chequered public career for a period of over 40 years.

Gopal Krishna Gokhale

(1866—1915)

Gokhale started life as a school master and rose to the position of the Principal of Fergusson College, Poona, which was a recognition of his intellectual brilliance and public service. He had an enormous capacity for hard work. His knowledge was 'vast, various and exact.' He was 'a master of direct expression and lucid exposition.' "He was so intellectually honest that he would never utter an opinion except after cross-examining himself severely."¹ He possessed the intellectual courage to give full and frank expression to his convictions even when it made him unpopular among a section of his countrymen.

Gokhale was a political and spiritual disciple of Justice Ranade. He was a leader of the Moderate School of Thought, in Indian politics and his ideas were in line with those of Dadabhai Naoroji and Sir Pherozeshah Mehta. He believed that the Congress should agitate only for gradual reforms in the system of administration in India and that it was unrealistic to demand self-government, all at once. He had faith in the adequacy of the constitutional method, which was followed by the Congress for 35 years from its inception. He had full faith in the British sense of justice and thought that Englishmen would grant freedom to India the moment they were convinced that Indians were fit for self-government. He felt that the connection of Britain with India was for India's good. Evidently these ideas of his were not to the liking of the Extremists which made Gokhale an eyesore

1. Chintamani : Indian Politics since the Mutiny, p. 39.

2. Sitaramayya : The History of the Indian National Congress, Vol. 1, p. 90.

with the radical section of Indians, headed by Tilak. Because of his moderate views, he often acted as an intermediary between the Government and the Congress and often "interpreted popular aspirations to the Viceroy and the Government's difficulties to the Congress."¹ This made him at times unpopular with both. The people 'disparaged his moderation and the Government deprecated his extremism.' But these occasional waves of unpopularity left him undaunted and he strenuously continued to do what he considered best in the interests of India. He was a true patriot. His love of Motherland was second to none. But while engaged in his public activities, he was always obsessed with the value of moderation. When he spoke to the Government on behalf of India, he made a distinction between "impossible and realizable aims." He believed that the essence of true statesmanship was an "unceasing adjustment to changes of circumstances, thought and opinion." This is why Gokhale is called a realist in politics or a practical idealist. It was his realism, which made him unpopular with the Extremists. What greater could be said of the man? Mahatma Gandhi regarded Gokhale as his Guru! So did some other liberal intellectualists of India, including C. Y. Chintamani and H.C.E. Zacharias.

Gokhale was an intellectual prodigy. For no less than 20 years, he worked in the service of Motherland. In 1897, at the young age of 31, he gave evidence in England before the Royal Commission on Indian Expenditure and voiced the feelings of his countrymen. He attacked the Salt Tax and showed how its incidence fell mostly on the poor. He bitterly criticized the policy of excluding Indians from the higher jobs. He pointed out the shortcomings of the Act of 1892, and clearly told the Government that Indians could not be satisfied with it. In 1902, he was nominated as a member of the Imperial Legislative Council. During the first four years of his membership, he often came into clash with Lord Curzon, whose reactionary policy exasperated Gokhale. The Partition of Bengal made him bitter and he said, "Then, all I can say is good-bye to all hope of co-operating, in any way with the bureaucracy, in the interests of the people." In 1905, at the age of 39, he was elected as the President of the Banaras Congress, where he justified the use of boycott as a political weapon under certain conditions. For two successive years, i. e., in 1905 and 1906, Gokhale was sent to England to represent the popular opinion in India to the British public and authorities. He was the First Member of the Servants of India Society, which gave India a band of self-denying workers and patriots. He had a great share in the framing of Morley-Minto Reforms of 1909. In 1912, he visited South Africa and helped Mahatma Gandhi in his Movement against the colour bar. It was on Gokhale's persuasion, that Mahatma Gandhi returned to India in 1914 to take part in

1. Sitaramayya : History of the Congress, Vol. I, p. 90.

her public life. In fact, Gokhale christianed Mahatma Gandhi into the Indian politics. On the invitation of Lord Willingdon, Gokhale prepared a scheme for future reforms in India, which was published after his death and is known as the "Political Testament of Gokhale".

Gokhale's patriotism meant "devotion to Motherland so profound and so passionate that its very thought thrills and its actual touch lifts one out of oneself." Tilak described him as 'the diamond of India, the jewel of Maharashtra and the Prince of workers.' Lala Lajpat Rai found Gokhale's 'patriotism of the purest type.' Even Curzon wrote to him, "God has endowed you with extraordinary abilities, and you have placed them unreservedly at the disposal of your country."¹ Mahatma Gandhi compared Gokhale with Ganges—which invited one to its bosom. Gandhiji once wrote, "In the sphere of politics, the place that Gokhale occupied in my heart during his life time and occupies even now has been and is absolutely unique."

Bal Gangadhar Tilak

(1856-1926)

It is an interesting coincidence that Tilak was born in 1856—the year preceding the Mutiny, when the general atmosphere in India was surcharged with revolt against the British Rule. Defiance of authority and revolt against injustice was in the very blood of Tilak. Tilak belonged to Maharashtra, the land of Sivaji. Like Sivaji, Tilak was a born fighter. He was a typical Maratha. Intense patriotism was the ruling passion of his life. Tilak was endowed with superb intelligence and indomitable will power. He "brought to bear upon every task that he undertook, an iron will and resolution that nothing could break. There was no means he would not employ to accomplish the task to which he put his hands, to achieve the end upon which he was bent."² Tilak was a staunch Hindu and drew inspiration from the ancient Indian philosophy. He was responsible for reviving the memory of Sivaji, whom he often quoted as an ideal hero. He inaugurated Ganpati and Sivaji festivals in order to infuse militant spirit in the Hindu youth. Tilak was a born journalist. He owned a Marathi paper, *The Kesari*, which he used as a powerful weapon against the British rule and those who differed from him.

Tilak was the most important leader of the Extremist School of Thought in Indian politics. With the entry of Tilak in the public life of India, the National Movement received a twist, which later events proved, was essentially healthy. Tilak marks the beginning of a new chapter in the Indian politics. The credit for starting the Extremist School belongs to Bipin Chandra Pal and Lala

1. Quoted by Chintamani : Indian Politics since the Mutiny, p. 40.

2. Chintamani : Indian Politics since Mutiny, p. 82.

Lajpat Rai along with Tilak. But the main inspiration came from him. Tilak had no faith in the method of prayers and petitions which the Moderates followed for achieving the political advancement of India. He regarded the constitutional method as altogether inadequate. It was his firm conviction that Independence would come to India only when Indians were strong enough to snatch it from the British hands. Like Kautalya and Machiavelli, it was his belief that end justified the means. For him all forms of actions good or bad, fair or foul were permissible, if they could lead to the ending of the British Rule. He considered it a misfortune of India that she should be under the iron heels of the British. He regarded the British rule as positively harmful for India. He had no faith in British sense of justice and believed that freedom would not be granted, but had to be wrested from unwilling hands. He regarded Independence the right of India, rather than a concession to be granted by Britain. He gave India her national slogan: "Swaraj is my birth right and I will have it", which became the goal of Indian National Congress from 1906. He regarded Hindu culture as distinctly superior to the Western culture and pooh-poohed all those Indians, who were aping Western habits and customs. He made the national movement a national revolt. He was the spear-head of aggressive nationalism in India. Throughout his life, he remained a terror to the British authorities, who regarded him as their enemy No. 1 in India. Mr. Montagu, the Secretary of State for India, found Tilak as *the only genuine extremist* in India. In giving birth to Extremism, Tilak provided the much needed sanction for the national demand of India. Tilak and his followers were a constant reminder to the Britishers that if Moderates failed, the National Movement would come under the control of the Extremists, with whom there could be no compromise. The Morley-Minto Reforms were accelerated by the realisation of that danger.

Before Tilak, the Congress movement was confined to the intelligentsia of the country. Tilak made the National Movement somewhat a mass movement. Much more than any body else amongst his contemporaries, Tilak realized the utility of political awakening in the country. With the entry of Tilak, the Congress movement became a popular revolt.

Tilak's life is a life of continuous suffering and sacrifices in the cause of Motherland. In 1897, when famine broke out in the country, he organised a No-Rent Campaign, which made him a suspect in the eyes of the Government. In 1890, Tilak was jailed for eighteen months as an instigator of the murder of Mr. Rand, the Plague Commissioner of Poona on the basis of certain writings in *the Kesari*, which made Tilak a popular hero. In the Congress of 1899, Tilak wanted to move a resolution condemning the regime of Lord Sandhurst. During the days of the Bengal Partition, Tilak was the most outspoken and ruthless critic of the British Government. The ranks of the Extremists swelled and Tilak's stature rose very

high, which made him a thorn in the flesh of the Government. It was because of his influence that in 1906 the Congress passed the four radical items of its programme, i.e. Swaraj, Swadeshi, Boycott and National Education. In 1908, Tilak was sentenced to 6 years' rigorous imprisonment, which ended in 1914. It was not only the British Government which regarded Tilak as the greatest danger to their rule in India, even the entire body of Moderates felt that his views were far too radical and dangerous for India. In 1907, the Congress split in two wings at Surat because the Moderates thought that they could not work with him at all. For nine long years, he was kept out of the Congress for his extreme views. During 1908-1914, when he was in jail, Tilak wrote his two famous books 'Arctic Home of the Vedas' and 'Gita Rahasya' which are monuments of his scholarship and learning. In 1914, when he was set free after 6 years, he was as unrepentant as ever and immediately after his release, began to consolidate once again the national forces in the country outside the Congress. He had no faith in the British promise that India would be suitably rewarded politically after the War. Events proved that he was right. In 1916, his entry into the Congress marked the exit of the Moderates from it. In 1916, he became the heart and soul of the Home Rule Movement along with Mrs. Annie Besant and was again jailed for six months. Tilak was called "the uncrowned king of Maharashtra and later of India during the Home Rule days." He was reverently called *Lokmanya* by Indians.

Gokhale and Tilak are often remembered together. Gandhiji records his first meeting with Gokhale and Tilak as follows, "the Lokmanya (seemed to me) like a ocean—and one could not launch forth on the sea. But Gokhale was as the Ganges—it invited one to its bosom." A masterly comparison of the two is given in the History of the Indian National Congress Dr. P. Sitaramayya. "Tilak and Gokhale were both Maharashtrians; they were both Brahmins; they both belonged to the same Chitparan sect. They were both patriots of the first order. Both had made heavy sacrifices in life. But their temperaments were widely different from each other. Gokhale was a 'Moderate' and Tilak was an 'Extremist', if we may use the language in vogue at the time. Gokhale's plan was to improve the existing Constitution; Tilak's was to reconstruct it. Gokhale had necessarily to work with the bureaucracy; Tilak had necessarily to fight it. Gokhale stood for co-operation wherever possible and opposition wherever necessary; Tilak inclined towards a policy of obstruction. Gokhale's prime concern was with the administration and its improvement; Tilak's supreme consideration was the Nation and its up-building. Gokhale's ideal was love and sacrifice; Tilak's was service and suffering. Gokhale's methods sought to win the foreigner; Tilak's to replace him. Gokhale depended upon other's help; Tilak upon self-help. Gokhale looked to the classes and the intelligentsia; Tilak to the masses and the millions. Gokhale's arena was the Council Chamber, Tilak's forum

was the village *mandap*. Gokhale's medium of expression was English ; Tilak's was Marathi. Gokhale's objective was self-government for which the people had to fit themselves by answering tests prescribed by the English ; Tilak's objective was *Swaraj* which is the birthright of every Indian and which he shall have without let or hinderance from the foreigner. Gokhale was on a level with his age ; Tilak was in advance of his times."¹

Lala Lajpat Rai

Lala Lajpat Rai belonged to the Punjab. He was one of the greatest orators that the country has produced. About his calibre as an orator, Mr. Chintamani writes, "As a public speaker, I think of Lloyd George and Lajpat Rai together. They had equal capacity for rousing the indignation of the masses. I have heard few speeches which could be placed by the side of Lajpat Rai's speeches in Urdu. In the thrilling effect they produced upon the mass mind, some of his Urdu speeches could only be compared to Lloyd George's orations at Lime House and Mile End."² Another quality of his character was fearlessness. Coupled with these two qualities, was his intense patriotism and his readiness to make the utmost sacrifices for the cause of the Motherland.

Lala Lajpat Rai was a Hindu nationalist. He stood for Hindu-Muslim unity, but would not purchase it at the cost of the Hindu interests. He was opposed to separate electorates and weightage for minorities. He was a leader of the Arya Samaj in the Punjab and made great efforts in laying the foundations of the D.A.V. College Lahore. Lala Lajpat Rai was a great lover of Indian religion and culture and regarded the same as distinctly superior to Western religion and culture. He was a philanthropist, a social worker and a great educationist, apart from being a patriot. God endowed him not only with an effective tongue, he also possessed a powerful pen, which he wielded throughout his public life in the service of the nation. He founded and edited three important papers, viz., the *Punjabee*, the *Bandematram* and the *People*.

In the National Movement of India, Lala Lajpat Rai occupies a place by the side of Lokmanya Tilak, with whom he had the honour of sharing the credit for starting the Extremist School of Politics. Lalaji joined the Congress in 1888. In 1905, he was sent to England along with Gokhale to represent the point of view of Indians before the British public. On return, he frankly told his countrymen that the method of the Moderates would take them nowhere. If they were keen on political advancement, they would have to rely on their own strength. Like Tilak, Lala Lajpat Rai also made tremendous sacrifices for the cause of Motherland and often suffered at the hands of the British Government. During

1. Dr. P. Sitaramayya : the History of the Indian National Congress, Vol. I, p. 99.
2. Indian Politics since Mutiny, p. 83.

1906-7, he was deported along with Sardar Ajit Singh because of his bitter protest against mishandling of the agrarian trouble in the Punjab. But he was released after six months. During the Surat Congress of 1907, his name was proposed for Presidentship by Tilak and was opposed by Gokhale, who regarded his candidature so much distasteful to the British Government that he said, "If you flout the Government, Government will throttle you,"¹ which shows, what a terror he was, to the British authorities in India. Lala Lajpat Rai withdrew his name, as he wanted to avoid a contest in view of the prevailing estrangement between the two wings. Because of his radical views, the Government was constantly on the look out to find an excuse to prosecute and convict him. He was once implicated by the Government along with some anarchists, but escaped conviction. During the years 1914-1916, i.e., throughout the World War I and a little longer, he remained in exile in U.S.A. During his stay in America, he published his famous book, 'Young India', which was an offence to read in India as well as in England. In 1920, he was elected as the President of the special session of the Congress. In 1923, Lala Lajpat Rai was elected to the Central Legislative Assembly and became the Deputy Leader of the Swaraj Party. Later, he severed his connections with the Swaraj Party and formed the Nationalist Party along with Madan Mohan Malviya. In 1928, while leading a protest procession against the Simon Commission, he was severely moulded and beaten by the police, as a result of which he died within a fortnight. Immediately after receiving the fatal blows, Lajpat Rai addressed the processionists and told them that the lathi blows, that were inflicted on him would prove one day as nails in the coffin of the British Empire. For his undaunted courage and fearlessness, Lala Lajpat Rai was called '*Sher-e-Punjab* i. e., the Lion of the Punjab.

Mrs. Annie Besant

Mrs. Annie Besant was an Irish lady. She was a great orator. She possessed indomitable will, penetrating intellect and undaunted courage. She came to India as a member of Theosophical Society in 1893 and was exclusively absorbed in religious, social and educational activities till 1913. As a member of the Theosophical Society and later on as its President in India, she identified the work of the Society in India with the movement for Hindu Revivalism. She regarded the Hindu religion and culture as distinctly superior to those of the West. She adopted the Hindu religion and declared her faith in Vedas and Upanishads. She made a beautiful English translation of the Bhagwad Gita, which was the first popular translation read by most of the Indians and foreigners, who did not know Sanskrit or Hindi and knew only English. In the movement of Hindu-Revivalism, her name comes alongside Dayanand, Tilak, B. C. Pal, Arvinda Ghosh and others

1. Quoted by Dr. Sitaramayya : The History of the Indian National Congress Vol. I, p. 102.

who revived the faith of the middle class Hindus in their spiritual and cultural heritage. She was dead against early marriage. She raised her voice against the system of enforced widowhood and stood for giving women a status of equality with men. She favoured national system of education and for that purpose started at Benaras, the Central Hindu High School, which later became a College and then developed into the Great Benaras University.

As a President of the Theosophical Society, she visited England frequently between 1908 and 1913. During these years, "the 'Suffragette' struggle for women's political rights left a deep impression on her. The Redmond's Home Rule Movement which was being carried on in Ireland suggested to her that a similar movement could possibly be started with advantage in India. On her return from England in 1913, she jumped into politics. "Her plan was to disentangle the nationalist Extremist from their compromising alliance with the revolutionaries, to reconcile them to a position within the British Empire and to bring them with the Moderates into line in a United Congress."¹ In 1914, she started a weekly, *Commonwealth*, which later on became a Madras daily under the name of *New India*. In 1915, she tried hard to bring the Extremists back to the Congress, but failed. Her efforts in bringing about rapprochement succeeded in 1916, when the Extremists were admitted into the Congress, after nine years. Mrs. Besant possessed so many qualities of head and heart, that she at once began to be recognised as one of the front rank leaders of the Congress. In order to revitalise the National Movement, she had the credit, along with Tilak, of starting the Home Rule Movement in India in 1916, which later spread throughout the country. She wanted Home Rule or self-government for India, but was against severing India's connection with England. She was in favour of Swadeshi, but not as a political weapon. She was against the boycott of British goods. In 1916, she was interned along with two colleagues of the Theosophical Society, Wadia and Arundale, which made her a national leader, but was released after 3 months. In 1917, she was elected as the President of the Indian National Congress. She described the Montford reforms as "unworthy of England to offer and India to accept." When the Non-co-operation resolution was passed in September, 1920 session of the Congress, she left the Congress for good and joined the Liberals. But she remained and worked as a friend of India till the very end of her life and during her last days sponsored the Commonwealth of India Bill in the British Parliament through George Lansburg as a private bill, which later died.

Madan Mohan Malviya

Pandit Madan Mohan Malviya was a unique personality in the public life of India. He led a profoundly religious life. He was all piety, goodness and simplicity. His sincerity of

1. Zacharias : *Renascent India*, p. 165.

purpose was never questioned. His *bonafides* were never doubted. He was in the service of the nation for more than sixty years. Throughout his life, he remained in the Congress, but never hesitated to oppose the official view, even when he was all alone in holding the different view. Dr. Pattabhi writes, "But through storm and sunshine, through good report and evil, Panditji stuck to it (Congress); Panditji is the one man who has had the courage to be alone in what he considered to be right.....when the Non-co-operation movement was inaugurated, he kept himself aloof from it but never from the Congress.....at one time he was on the crest of a wave of popularity, at another he was listened to with indifference on the Congress platform. He never yielded to the current forces either by sheer inertia or by fear of popular reprobation. When all the Congressmen resigned their places in the Assembly in 1929, he remained and had a right to remain there as a member, because he had not gone there as a Congressman. And when in less than four months, the time and occasion demanded it, he resigned in 1930. In 1921, he had opposed the Non-co-operation movement, but in 1930, he found himself a whole-hearted civil resister."¹

Pandit Madan Mohan Malviya was a staunch Hindu, but was not a communalist. He was a nationalist, but would not let the Hindu interests suffer. Panditji was a progressive Hindu, but a conservative Congressman. In the Central Assembly when he found the Swarajist Party, in his opinion, surrendering the Hindu interests to the Muslim communalists, he formed a separate Party called the Nationalist Party along with Lala Lajpat Rai. He was frankly disappointed with the attitude of the Congress towards the Communal Award. He found no consistency in the Congress as a national organisation, when it accepted communal demands of the Muslims, which often led him to oppose Congress policies. But with all his differences from the Congressmen at times, his advice and opinions were always valued by the Congress and he was invariably offered a seat on the Congress Working Committee. So much universally loved and honoured was he that his seat in the Legislature was seldom contested. Like Gandhiji, he started as a friend of the British Empire but later became bitter against the policy of the British Government. He was throughout in the Congress, but was never 'of the Congress.' The Indian National Congress twice elected him as its President despite his Hindu views, and Hindu Maha Sabha thrice elected him as its President despite his membership of the Congress. All work of Malviyaji was public work. All his time, energy and money was a dedication to society. He was a good speaker and an effective writer. His greatest contribution to India is the Benaras Hindu University, which he founded and developed through years of tireless work. In order to give a sound

1. The History of Indian National Congress, Vol. I, pp. 101-2.

financial backing to the University, he had to travel throughout the length and breadth of the country for collecting donations.

Moti Lal Nehru

Pandit Moti Lal Nehru entered politics seriously in 1917, when he was already 56 years old. By then, he had already made a name for himself as one of the most outstanding members of the Bar in India. His yearly income from the Bar ran into lakhs. He led a princely life. From 1917 to 1931, he was the greatest Congress leader of the United Provinces and during the last ten years of his life was the brain behind the Indian National Congress. Pandit Nehru was a great admirer of the British character and the British ways of life. To start with, he was very moderate in his political views, but as he threw himself more and more in politics, "he inclined towards extremism". He was a great advocate of the Council-Entry Programme and takes his place by the side of C. R. Das in this respect.

In 1919, he was appointed as a member of the Committee set up by the Congress to report upon the tragic happenings in the Jallianwala Bagh. That very year, he was elected as the President of the Indian National Congress. To start with, he was not in favour of the non-co-operation movement, but when it actually began he courted imprisonment. In 1923, he organised the Swaraj Party along with C. R. Das and became its undisputed Leader in the Central Legislative Assembly. We have already described the valuable work done by the Swaraj Party in the Central Legislative Assembly in an earlier chapter.¹ Pandit Moti Lal Nehru was often able to win the support of the independent members in the Assembly on crucial questions and thus inflicted a series of defeats on the Government. The famous amendment of 1924 demanding a revision of the Act of 1919 and a Round Table Conference, the rejection of four important demands for grants in the Finance Bill of 1924-25, the rejection of the budgets of 1926 and 1927 and the rejection of expenditure on the Lee Commission and the Simon Commission are some of the outstanding achievements of Pandit Moti Lal as a Leader of the Swaraj Party.

He took a leading part in drafting the Nehru Report, which is regarded as an act of constructive statesmanship and the first comprehensive constitutional document prepared by Indians. The provisions and the merits of the Report have been described earlier.² When the Nehru Report was not accepted by the Government, clash with the Government became inevitable. Pandit Moti Lal made hectic efforts to avert the clash, but when that could not be done, he gave his full support to the resolution of Complete Independence passed at Lahore in 1929 and courted imprisonment in the Civil Disobedience Movement that

1. See pp. 144, 148.

2. See p. 154.

followed. He was already seventy in 1931. Imprisonment shattered his health completely and he died shortly after his release that very year. It is said that at the time of his death when his relatives and friends enquired what was his last wish, he murmured that it was to die in a free India which could not be fulfilled.

The contributions of Pandit Moti Lal Nehru to national movement are tremendous. The sufferings undergone in jail in the cause of nationalism, when viewed in the light of the luxurious life he had lived throughout the preceding years are heroic. He gave his palatial building, *Anand Bhawan* at Allahabad to the Congress, which for years remained the headquarters of the great organisation. His greatest contribution to the country, of course, is his jewel of a son, Mr. Jawahar Lal Nehru, our Prime Minister. It is said that the son was very much responsible for drawing him to politics and later for making him cross from Moderatism to Extremism.

Mahatma Gandhi

Mahatma Gandhi was an institution by himself. The sum total of his ideas constitutes a regular school of thought—a distinct philosophy of life. There is world-wide eagerness to understand the man and his ideas. In 1953, a 'Seminar on Gandhian outlook and Techniques' was held in India, in which nine foreign countries took part under the chairmanship of Lord Boyd-Orr—a great internationalist, who had won the unique honour of the Nobel Peace Prize. The Gandhian philosophy has recently been included in the curriculum of some of the Indian Universities. Mahatma Gandhi was a great writer in English with a superb style. To understand him, one must read the vast amount of writings which are to his credit. Many others have written about him, which also needs assimilation. All over the world, new books are being published about him which have put some revealing interpretations on Mahatma Gandhi. It is impossible to paint an accurate picture of such a unique figure like him within the short space at our disposal. All we can do is to make a brief mention of some of his ideas and contributions which have, more or less, a direct bearing on the National Movement of this country and which prove that he was one of the greatest friends of humanity and especially its suffering, downtrodden and oppressed sections.

Mahatma Gandhi was born in 1869 at Porbandar in Kathiawad in a Vaish family. His father was a big official in an Indian State. He went to England in 1887 and qualified as a Barrister-at-Law. In 1891, he returned to India and started legal practice. In 1893, he went to South Africa to conduct some case. The policy of racial discrimination which was followed by the South African Government against Indians, who had gone and lived in that country found a challenge in Mahatma Gandhi and he at once chose to stay on in that country, which he did for twenty years to fight the suppression of his country-men. As a result of

untold sufferings and sacrifices, Mahatma Gandhi secured for Indians in that country a position, though not satisfactory, but at least tolerable. About Mahatma Gandhi's work in South Africa Gokhale wrote, "The Indian case in South Africa has really been built by Mahatma Gandhi.....without self and without stain, he has fought a great fight for India, for which India owes him an immense debt of gratitude."¹

Mahatma Gandhi returned to India from South Africa towards the end of 1914. As for the purpose of his coming to India, he himself writes, "I wanted to acquaint India with the method I have tried in South Africa and I desired to test in India the extent to which its application might be possible." Before putting it to a nation-wide use in 1920, Mahatma Gandhi had already successfully tried this method five times in India between 1915 and 1919. Firstly, in 1915 Customs cordon at Viragram was abolished on the mere intimation that people were ready to offer satyagraha. Secondly, in 1917, the emigration of indentured labourers from India was similarly stopped. Thirdly, Mahatma Gandhi was allowed to continue his enquiry into agrarian grievances at Champaran, when he threatened to resort to satyagraha, if stopped. Fourthly, he was able to get legitimate rights of the industrial labourers fulfilled at the hands of the mill-owners of Ahmedabad in 1919. And lastly, the Government remitted the payment of rent owing to failure of crops to peasants at Kheda in Gujarat, when satyagraha was started for the purpose.

The techniques of Satyagraha : It was in South Africa that Mahatma Gandhi evolved and tried, for the first time, his technique of satyagraha. Satyagraha is a Sanskrit word, which means 'holding on to Truth.' Satya means Truth.....that which is 'right and just.' Agraha means "the possessive grasp of a thing, whereby it becomes a part of oneself; it is the holding on like grim death against all hostile attempts at making one loosen one's grip."² In other words, Satyagraha means pursuing a truth or opposing a wrong, whatever the sufferings or sacrifices involved. Satyagraha is to be accompanied by Ahimsa which means 'harmlessness,' or simply non-violence. Thus according to Mahatma Gandhi, truth was to be pursued to the bitter end without causing any violence whatsoever to the wrong-doer.

Mahatma Gandhi made a distinction between passive resistance and satyagraha. "Passive resistance may be a political weapon based on expediency; satyagraha is a spiritual weapon. Passive resistance is a weapon of the weak; it is only a man who is morally and spiritually strong who can practise satyagraha. Passive resistance may be resorted to out of fear or hatred; satyagraha is based on love for the opponent and seeks to regenerate him.

1. See Zacharias : *Renascent India*, pp. 70-71.

2. Zacharias : *Renascent India*, pp. 71-72.

Satyagraha is dynamic ; passive resistance is static. Passive resistance acts negatively and suffers reluctantly ; satyagraha acts positively and suffers cheerfully. Passive resistance does not entirely ignore the possibility of violence because it is based on expediency ; satyagraha will not tolerate violence in word or in deed. Passive resistance may result in demoralization ; satyagraha always ennobles its practitioners. The resistance to evil of a satyagraha is an active and not passive resistance."

Coupled with satyagraha and non-violence, Mahatma Gandhi evolved the technique of non-co-operation and civil disobedience when a man or a nation is face to face with a wrong perpetuated by a Government. "The idea of non-co-operation is that the victim of injustice and tyranny should withdraw his co-operation from the tyrant and therefore from tyranny. If he tolerates wrong and does not non-co-operate with it, he is an accessory to wrong." Civil disobedience means disobedience or no-obedience of the laws or the orders of the Government, and facing the penalties and sacrifices involved in such a disobedience cheerfully and bravely with the object of changing those laws and orders.

In the 'Seminar on Gandhian Outlook and Techniques,' it was said that Mahatma Gandhi used some further codes¹ of behaviour in conducting satyagraha. Firstly, he invariably preferred trust to mistrust. Gandhiji once said, "I refuse to suspect human nature, it will, is bound to, respond to any noble and friendly action." Secondly, Mahatma Gandhi believed in developing personal contacts with the wrong-doer based on trust and good will. Thirdly, "though he had the pole star for his ultimate guidance, he had his feet firmly on earth." While pursuing an ideal, he never lost sight of realities. Fourthly, he was an incorrigible optimist. He would rarely lose hope while pursuing a good object. He was patient and painstaking to an extraordinary extent in trying to bring others round to his views. Fifthly, "though he never discarded reason, in the last resort, he appealed from the head to the heart by some significant act of self-suffering." One of such acts was his going to prison. Gandhiji once said, "I get the best bargains from behind the prison bars." "More spiritual phase of his suffering was the observing of fasts. It was the strategy of his mortified life." He was once asked, "Is not your fasting a species of coercion?" Gandhiji replied, "Yes, the same kind, which Jesus exercised from the Cross." Sixthly, he always concentrated on one question at a time. From 1893 to 1914, he concentrated on the removal of colour bar in South Africa. From 1914 to 1947, his main object was the winning of Independence for India. Seventhly, he made use of appropriate symbols in the furtherance of his object. The "Charkha began as a simple tool and became a universal symbol of a new way of life,"

1. See article by N.R. Malkani on the Seminar in Hindustan Times July 19, 1953.

The Gandhi cap was also symbolic in its own way. To Englishmen it became like a red rag to a bull. The Dandi March of 1930 had a significance quite its own. The Individual Satyagraha of 1940-41 was again symbolic. And lastly, Mahatma Gandhi "established 'cells' of workers all over the country for the practice of what he preached and these Ashrams served as focii for ever-widening activities."

Mahatma Gandhi's contributions to the National Movement of India : The part played by Mahatma Gandhi in the National Movement and the Constitutional Development of India from the time of his arrival in 1914, till the achievement of Independence in 1947 has already been described in the course of the long narrative in this book. With the beginning of the Non-co-operation Movement of 1920, Mahatma Gandhi assumed the leadership of the national forces in India which ended only by his death in 1948. This period is generally described as the Gandhian Era in the Indian Politics.

From 1920 to 1947, Mahatma Gandhi spoke the final word on behalf of nationalist India, while chalking out the programme of the National Movement and in negotiations with the British Government for constitutional advancement. During all these years, he was not only the spear-head of the National Movement, even the method and the technique were entirely his. The Moderates were never for direct action against the Government. In 1916, the Extremists assumed virtual control of the Congress, but were not clear how to use the Policy of Direct Action against the Government. Nobody knew how to take cudgels against the British Government by unconstitutional means. The use of violence was impracticable.¹ The greatest contribution of Mahatma Gandhi was the method of non-violent, non-co-operation and civil disobedience, which he gave to the nation in her struggle for Independence. It was primarily Gandhiji who made the National Movement a mass movement. He was mostly instrumental in spreading political consciousness throughout the length and breadth of India. His very presence dissuaded Congressmen from indulging in mutual factions and intrigues. He was able to attract a galaxy of towering personalities around him for the cause. One net result of the first non-co-operation movement of 1920-22 was that all fear and awe of the British Government and authorities were gone. Because of him, jail became a pilgrimage for the Indian patriots and the defiance of wrongful authority, the noblest ethics. In him, the British Government found the greatest challenge to their rule in India. His being was a symbolic representation of the dumb millions of India. Throughout his life, he suffered untold physical privations and tortures in his attempt to make India free. More than anybody else, rather more than all other workers in

1. See discussion on pages 5-6 on the Method of Non-Violent Civil Disobedience.

the national cause combined, many believe, Mahatma Gandhi was responsible for winning the Independence of India. This is why Indians reverently and in gratitude remember him as the "Father of the Nation." Independence was not only achieved, it was brought about with the least amount of sacrifices and in the shortest of time as compared with any other freedom movement in any other country of the world. The method which he followed, not only made the noble minds among Englishmen look morally guilty in themselves, it won the sympathies of the best minds all the world over for the right of Indians to be free.

Gandhi as a man and his non-political ideas : Gandhiji was a man of sterling character. He was a living example of all that is known as good conduct. He believed in simple living and high thinking. He was the very embodiment of truth. As a practising lawyer, he used to return the fee of a client the moment he would come to know that his case was false. His autobiography has very appropriately been named : 'My Experiments with Truth.' He was a great friend of humanity. He was a saviour of the poor and the needy. Fear never beset his calculations. He was non-violent in thoughts, words and actions. He practised all that he preached, which is the rarest quality. His weapon was that of love. He had an infinite capacity for bearing physical pains.

Gandhiji was essentially a religious man. He believed in the equality of all religions, and not merely in toleration towards other religions. He had a blind faith in God. He often depended on his inner voice or the voice of God for guidance, when he took the most momentous decisions. Truth for him was the highest religion ; it was the very God. Satyagraha, according to him, was the relentless pursuit of truthful ends by non-violent and pure means. Truth and non-violence were the very pivots of his philosophy of life. He believed not only in the purity of ends, but equally insisted on the purity of means.

Gandhiji was a great social reformer. There was hardly any plague-spot in the Indian society, which escaped his notice and which he did not try to heal. He spared no pains to further the cause of Hindu-Muslim unity. In him, the Depressed Classes found their greatest friend. No body has done more than Gandhiji to eradicate the evil of untouchability from the Hindu Society. He regarded alcoholism as a curse, and did all he could, to introduce prohibition in the country. He was a staunch advocate of the rights of women and stood for giving them equal status with men. He was against the caste system. He decried the present system of education—its examinations and chain of degrees and wanted to impart education with a nationalist, utilitarian and emotional basis as propounded in the Wardha Scheme of Education. He stood for spreading education.

Gandhiji believed that most of the internal as well as external conflicts in society arose because of glaring inequalities of wealth. His concept of property is rather revolutionary. He believed that honest work entitles a man only to adequate living wage—elementary necessities of life. Any excess amassing of wealth is to be avoided. When wealth is accumulated more than what is so needed, the excess should be administered by the owner of the property as a trust for the poor and the needy. He wanted to improve the economic lot of the common man of India. He was a staunch believer in the utility of cottage industries and village crafts and regarded them as a sovereign remedy for ending unemployment and poverty among the rural masses of India. He stood for decentralised economy and small-scale production. In his opinion, the huge industrial enterprises based on modern scientific inventions and machinery were not necessary for India. He was a friend of the labourers and supported all their legitimate claims. He believed that the villages of India should become self-sufficient economic units, where the economic needs of everybody are adequately fulfilled on the basis of voluntary mutual help.

Political ideas of Mahatma Gandhi : Mahatma Gandhi was a firm believer in the interdependence of religion and politics. He said, "For me there are no politics devoid of religion. Politics bereft of religion are a death-trap because they kill the soul." He believed that those who held that religion had nothing to do with politics did not know what religion was. When Mahatma Gandhi said that politics was based on religion, he did not mean by religion any particular rituals, dogmas or creeds. What he meant was that all good politics has its root in truth and justice, which was the essence of a true religion. Religion and politics both aim at the good of the society. Hence both are interdependent. By religion, Mahatma Gandhi really meant ethics. In other words, he believed that ethics was the basis of politics. All political actions, whether of an individual or of a State, must be grounded in justice and right. Moreover, he thought that purity of political means was as essential as the purity of ends. A State should refrain from employing impure means, dishonesty, cunning and deceit, not only in its internal policy but also in its dealing with outside States. "Not only the ends but means must also be good. Man must adopt correct means to achieve correct ends. One has control over means and not over ends. If one takes care of the means, the end will take care of itself. It was wrong to suppose that a good end justifies any means, good or bad. Such a view is bound to lead to dishonesty, fraud and violence. Mankind cannot expect lasting good to result from the use of bad means". Mahatma Gandhi was a staunch believer in the fundamental rights of man, but emphasised that rights were inseparably bound with duties. To enjoy rights, one must be prepared to do his duties. In fact, Gandhiji's emphasis was more on duties than on rights. Mahatma Gandhi was not only a nationalist, but he was also a great internationalist. He believed

that it was impossible for any one to become a true internationalist, without being a nationalist. He branded war as an outright evil. He resented the colour prejudice of white races against the black and the brown and regarded it as one of the major causes of international conflicts.

Mahatma Gandhi is often described as a philosophical anarchist. He regarded the State as unnecessary. In the ideal society of his imagination, the institutions of the modern State like police, jails and courts will not be necessary. It will be a democracy without the State. "It was an enlightened anarchy in which social life is based not on external but on internal, i. e., moral restraints. In such a society, there is no relationship of command and obedience, superior or inferior. Everybody rules over himself and regulates his own actions in the interests of the society for he is a social being." Mahatma Gandhi was once asked about his conception of Swaraj in India. He replied that he wanted to see the establishment of Ram Rajya in India. By Ram Rajya, Gandhiji meant the Kingdom of God on earth. For him, Swaraj for India was "a perfect democracy in which inequalities based on possession and non-possession, colour, race or creed or sex vanish. In it, land and State would belong to the people. Justice is prompt, perfect and cheap, and therefore there is freedom of worship and of speech and the press—all this because of the reign of the self-imposed law of moral restraint. Such a State must be based on truth and non-violence, and must consist of prosperous, happy, and self-contained villages and village communities." In his conception of Swaraj, there was no room for capitalism or exploitation of man by man. It was primarily to be an agricultural society with cottage industries. It was based on the principles of free labour and non-possession. Thus Mahatma Gandhi's view about Swaraj was quite a revolutionary one. It presupposes the existence of individuals of a moral calibre, which only few can reach. Mahatma Gandhi was quite conscious of the fact that such a society can only be a distant goal. If such a society was not achieved, as a second alternative, Mahatma Gandhi preferred, "a non-violent State with limited functions and with social and, as far as possible, economic equality."

Mahatma Gandhi as a world-teacher : The main principles of Mahatma Gandhi's teaching that we should be non-violent in words, deed and thought ; that we should recognise the fatherhood of God and brotherhood of man and therefore should love all ; that we should forgive rather than punish ; that we should oppose and resist untruth, tyranny and oppression wherever it exists ; that we should be prepared to make highest personal sacrifices for the attainment of our ideals ; that our ideals as well as means should be good ; that we should believe in plain living and high thinking ; that we should feel concerned only with

our duty unmindful of the results thereof; that we should love even our enemies and should wish well of them and that we should lead life of abstinence and chastity-all have a universal utility for the whole humanity.

Mr. Mavalankar wrote, "What is that Mahatma Gandhi lived for? He lived for the liberation of humanity all the world over from exploitation, disease, hunger, ignorance and mental and physical worries and miseries. The betterment of life, a higher spiritual and material level of life for all human beings was his ideal and he strove life-long and suffered in his long struggle all sorts of difficulties, privations, imprisonments, to so mould the society."¹ To the present-day world, torn with suspicion and strife, Mahatma Gandhi gave the message of peace and love. If force and war were left out of the calculations of the present States, the future of mankind is safe and assured. In the course of an address delivered at the Banaras Hindu University in December 1947, Rev. Dr. Holmes said, "The choice before the world today is between the atom bomb on the one hand and non-violence (*ahimsa*), as advanced by Mahatma Gandhi on the other and the choice is a matter of life and death.....the atom bomb is the perfect symbol of force that the West stood for, while Gandhiji is the crown and climax of all that is meant by a spiritual civilization.....the West was under the throes of death through reliance on physical force. Either the West had to accept Gandhiji's leadership and walk in his appointed way or perish. Gandhiji by climaxing his career with the triumph over the British Empire, has proved that spiritual force, if given a chance, will in the long run prove more potent than any physical force."²

Mahatma Gandhi's method of non-violent civil disobedience, which he used in winning Independence for India, has given a new weapon to suppressed and subjugated nations of the humanity all over the world for breaking their shackles. Before Mahatma Gandhi, use of force or some international organisation were the only two methods for winning freedom. The first involved bloodshed on a large scale and the second was often ineffective. Mahatma Gandhi gave a weapon which, if rightly used, is bound to lead to good results. His work in South Africa had a great effect in improving the lot of the coloured people all over the world. In the words of Sir Arthur Moore, "Nor was Gandhiji's influence on colour questions confined to Indians and it is safe to say that through him there is an improved atmosphere for Negroes not only in Africa and America but all over the world." During 1947, there was Independence for India, but there was no rest for Gandhiji. On the day of Independence, when the entire Indian nation was rejoicing on the grant of Independence, Gandhiji was touring bare-footed in

1. See Hindustan Times, October 2, 1951.

2. See Hindustan Times, October 2, 1951.

Noakhali in the East Bengal to bring amity between the Hindus and Muslims. After Independence, he staked his life to bring peace in Calcutta and saved the lives of many Muslims by his intervention in Delhi. His great concern for Muslims, who were left in India showed that he was a true friend of humanity. In 1948, he was killed by a fanatic Hindu, who thought he was harming the interests of Hindus by helping the Muslims !

When Mahatma Gandhi died Sir Stafford Cripps said, "There has been no greater spiritual leader in the world in our times." Mr. Fenner Brockway recorded, "The world has lost its greatest figure, perhaps, history has lost its greatest figure." Lord Halifax added, "I suppose there can be few men in all history, who by their personal character and example have been able so deeply to influence the thought of their generation" Rev. Dr. J. H. Holmes, an American missionary described Mahatma Gandhi "as the greatest Indian since Gautam Buddha and the greatest man the world has seen since Jesus Christ." In 1922, Dr. Holmes wrote, "When I think of Rolland, I think of Tolstoi : when I think of Lenin, I think of Napoleon ; but when I think of Gandhi, I think of Jesus Christ. He lives *his* life, he speaks *his* words, he suffers, strives and will some day nobly die for the Kingdom of God on earth." How true came the prophecy of this distinguished American missionary made 26 years before the death of Mahatma Gandhi !

LASTING DOCTRINES

"A guiding light of wisdom, so was Gandhiji's teaching ;
A reviving history of mercy, so were his deeds ;
A glorious history of struggle, so was his life ;
Struggle for construction and promotion,
Struggle for uplift of needy and poor,
Struggle for *truth, non-violence and peace*,
And though the days are passing fast,
Doctrines will ever last."

APPENDIX I

CONSTITUTIONAL AMENDMENTS

THE CONSTITUTION (FIRST AMENDMENT) ACT, 1951

An Act to amend the Constitution of India

Be it enacted by Parliament as follows :—

1. Short title.—This Act may be called the Constitution (First Amendment) Act, 1951.

2. Amendment of article 15.—To article 15 of the Constitution, the following clause shall be added :—

“(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”

3. Amendment of article 19 and validation of certain laws.—(1) In article 19 of the Constitution,—

(a) for clause (2), the following clause shall be substituted, and the said clause shall be deemed always to have been enacted in the following form, namely :—

“(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.”

(b) in clause (6), for the words beginning with the words “nothing in the said sub-clause” and ending with the words “occupation, trade or business”, the following shall be substituted, namely :—

“nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

- (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

(2) No law in force in the territory of India immediately before the commencement of the Constitution which is consistent with the provisions of article 19 of the Constitution as amended by sub-section (1) of this section shall be deemed to be void, or ever to have become void, on the ground only that being a law which takes away or abridges the right conferred by sub-clause (a) of clause (1) of the said article, its operation was not saved by clause (2) of that article as originally enacted.

Explanation.—In this sub-section, the expression "law in force" has the same meaning as in clause (1) of article 13 of the Constitution.

4. Insertion of new article 31A.—After article 31 of the Constitution, the following article shall be inserted, and shall be deemed always to have been inserted, namely :—

"31A. *Saving of laws providing for acquisition of estates, etc.*—
(1) Notwithstanding anything in the foregoing provisions of this Part, no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such right shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part :

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

(2) In this article,—

- (a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any *jagir*, *inam* or *muafi* or other similar grant ;
- (b) the expression "right", in relation to an estate, shall include any right investing in a proprietor, sub-proprietor, under proprietor, tenure-holder or other intermediary and any rights or privileges in respect of land revenue."

5. Insertion of new article 31B.—After article 31A of the Constitution as inserted by section 4, the following article shall be inserted, namely :—

"31B. *Validation of certain Acts and Regulations.*—Without prejudice to the generality of the provisions contained in article

31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force."

6. Amendment of article 85.—For article 85 of the Constitution, the following article shall be substituted, namely :—

"85. *Sessions of Parliament, prorogation and dissolution.*—(1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time—

- (a) prorogue the Houses or either House ;
- (b) dissolve the House of the People."

7. Amendment of article 87.—In article 87 of the Constitution,—

(1) in clause (1), for the words "every session" the words "the first session after each general election to the House of the People and at the commencement of the first session of each year" shall be substituted ;

(2) in clause (2), the words "and for the precedence of such discussion over other business of the House" of shall be omitted.

8. Amendment of article 174.—For article 174 of the Constitution, the following article shall be substituted, namely :—

"174. *Sessions of the State Legislature, prorogation and dissolution.*—(1) The Governor shall from time to time summon the Houses or each House of the Legislature of the State or meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time—

- (a) prorogue the Houses or either House ;
- (b) dissolve the Legislative Assembly."

9. Amendment of article 176.—In article 176 of the Constitution,—

(1) in clause (1), for the words "every session" the words "the first session after each general election to the Legislative Assembly

and at the commencement of the first session of each year" shall be substituted ;

(2) in clause (2), the words "and for the precedence of such discussion over other business of the House" shall be omitted.

10. Amendment of article 341.—In clause (1) of article 341 of the Constitution, for the words "may, after consultation with the Governor or Rajpramukh of a State," the words "may with respect to any State, and where it is a State specified in Part A or Part B of the First Schedule, after consultation with the Governor or Rajpramukh thereof;" shall be substituted.

11. Amendment of article 342.—In clause (1) of article 342 of the Constitution, for the words "may, after consultation with the Governor or Rajpramukh of a State," the words "may with respect to any State, and where it is a State specified in Part A or Part B of the First Schedule, after consultation with the Governor or Rajpramukh thereof," shall be substituted.

12. Amendment of article 372.—In sub-clause (a) of clause (3) of article 372 of the Constitution, for the words "two years" the words "three years" shall be substituted.

13. Amendment of article 376.—At the end of clause (1) of article 376 of the Constitution, the following shall be added, namely :—

"Any such Judge shall, notwithstanding that he is not a citizen of India, be eligible for appointment as Chief Justice of such High Court, or as Chief Justice or other Judge of any other High Court."

14. Addition of Ninth Schedule.—After the Eighth Schedule to the Constitution, the following Schedule shall be added, namely :

"NINTH SCHEDULE

[Article 31B]

1. The Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950).
2. The Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act LXVII of 1948).
3. The Bombay Maleki Tenure Abolition Act, 1949 (Bombay Act LXI of 1949).
4. The Bombay Taluqdari Tenure Abolition Act, 1949 (Bombay Act LXII of 1949).
5. The Panch Mahals Mehwassi Tenure Abolition Act, 1949 (Bombay Act LXIII of 1949).
6. The Bombay Khoti Abolition Act, 1950 (Bombay Act VI of 1950).

7. The Bombay Paragana and Kulkarni Watan Abolition Act, 1950 (Bombay Act LX of 1950).
8. The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act 1950 (Madhya Pradesh Act I of 1951).
9. The Madras Estate (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948).
10. The Madras Estates (Abolition and Conversion in Ryotwari) Amendment Act, 1950 (Madras Act I of 1950).
11. The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Uttar Pradesh I of 1951).
12. The Hyderabad (Abolition of Jagirs) Regulation, 1358 F. (No. LXIX of 1358, Fasli).
13. The Hyderabad Jagir (Commutation) Regulation, 1359F. (No. XXV of 1359, Fasli)."

THE CONSTITUTION (SECOND AMENDMENT) ACT, 1952

An Act further to amend the Constitution of India

BE it enacted by Parliament as follows :—

1. Short title.—This Act may be called the Constitution (Second Amendment) Act, 1952.

2. Amendment of article 81.—In sub-clause (b) of clause (1) of article 10 of the Constitution, the words and figures "not less than one member for every 750,000 of the population and" shall be omitted.

THE CONSTITUTION (THIRD AMENDMENT) ACT, 1954

An Act further to amend the Constitution of India

BE it enacted by Parliament in the Fifth Year of the Republic of India as follows :—

1. Short title.—This Act may be called the Constitution (Third Amendment) Act, 1954.

2. Amendment of the Seventh Schedule.—In the Seventh Schedule to the Constitution, for entry 33 of List III, the following entry shall be substituted, namely :—

"33. Trade and commerce in, and the production, supply and distribution of,—

- (a) the products of any industry where the control of such industry by the Union is declared by the Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products ;

- (b) foodstuffs, including edible oilseeds and oils ;
- (c) cattle fodder, including oilcakes and other concentrates ;
- (d) raw cotton, whether ginned or unginned, and cotton seed ;
and
- (e) raw jute."

THE CONSTITUTION (FOURTH AMENDMENT) ACT, 1955

An Act further to amend the Constitution of India

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows :—

1. Short title.—This Act may be called the Constitution (Fourth Amendment) Act, 1955.

2. Amendment of article 31.—In article 31 of the Constitution for clause (2), the following clauses shall be substituted, namely :—

"(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which the compensation is to be determined and given ; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of this property."

3. Amendment of article 31A.—In article 31A of the Constitution,—

- (a) for clause (1), the following clause shall be and shall be deemed always to have been substituted namely :—

"(1) Notwithstanding anything contained in article 13, no law providing for—

- (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
- (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

- (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or
- (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or
- (e) extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by article 14, article 19 or article 31 :

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President has received his assent." and

(b) in clause (2),—

(i) in sub-clause (a) after the word "grant", the words "and in States of Madras and Travancore-Cochin, any *janmam* right" shall be, and shall be deemed always to have been inserted ; and

(ii) in sub-clause (b), after the word "tenure-holder", the word "*raiyyat, under-raiyyat*" shall be, and shall be deemed always to have been, inserted.

4. Substitution of new article for article 305.—For article 305 of the Constitution, the following article shall be substituted, namely :—

"305. **Saving laws existing and laws providing for State monopolies.**—Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct ; and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (ii) of clause (6) of article 19."

5. Amendment of the Ninth Schedule.—In the Ninth Schedule to the Constitution, after entry 13, the following entries shall be added, namely :—

"14. The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act, 1950 (Bihar Act XXXVIII of 1950).

15. The United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U. P. Act XXVI of 1948).

16. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Act LX of 1948).

17. Sections 52A to 52G of the Insurance Act, 1938 (Act IV of 1938), as inserted by section 42 of the Insurance (Amendment) Act, 1950 (Act XLVII of 1950).

18. The Railway Companies (Emergency Provisions) Act, 1951 (Act LI of 1951).

19. Chapter III-A of the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951), as inserted by section 13 of the Industries (Development and Regulation) Amendment Act, 1953 (Act XXVI of 1953).

20. The West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948), as amended by West Bengal Act XXIX of 1951."

THE CONSTITUTION (FIFTH AMENDMENT) ACT, 1955

An Act further to amend the Constitution of India

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows :—

1. This Act may be called the Constitution (Fifth Amendment) Act, 1955.

2. In article 3 of the Constitution, for the proviso, the following proviso shall be substituted, namely :—

"Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States specified in Part A or Part B of the First Schedule, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired."

THE CONSTITUTION (SIXTH AMENDMENT) ACT, 1956

An Act further to amend the Constitution of India

(11th September, 1956)

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows :—

1. Short title.—This Act may be called the Constitution (Sixth Amendment) Act, 1956.

2. Amendment of the Seventh Schedule.—In the Seventh Schedule to the Constitution,—

(a) in the Union List, after entry 92, the following entry shall be inserted, namely :—

“92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce” ; and

(b) in the State list, for entry 54, the following entry shall be substituted, namely :—

“54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.”

3. Amendment of article 269.—In article 269 of the Constitution,—

(a) in clause (i), after sub-clause (f), the following sub-clause shall be inserted, namely :—

“(g) taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce” ; and

(b) after clause (2), the following clause shall be inserted, namely :—

“(3) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.”

4. Amendment of article 286.—In article 286 of the Constitution,—

(a) in clause (1), the Explanation shall be omitted ; and

(b) for clauses (2) and (3), the following clauses shall be substituted, namely :—

“(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.”

THE CONSTITUTION (SEVENTH AMENDMENT) ACT, 1956

An Act further to amend the Constitution of India.

(19th October, 1956)

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows :—

1. Short title and Commencement.—(1) This Act may be called the Constitution (Seventh Amendment) Act, 1956.

(2) It shall come into force on the 1st day of November, 1956.

2. Amendment of article 1 and First Schedule.—(1) In article 1 of the Constitution,—

(a) for clause (2), the following clause shall be substituted namely :—

“(2) The States and the territories thereof shall be as specified in the First Schedule.” ; and

(b) in clause (3), for sub-clause (b), the following sub-Clause shall be substituted, namely :—

“(b) the Union territories specified in the First Schedule ; and”.

(2) For the First Schedule to the Constitution as amended by the States Reorganisation Act, 1956, and the Bihar and West Bengal (Transfer of Territories) Act, 1956, the following Schedule shall be substituted, namely :—

“FIRST SCHEDULE

(Articles 1 and 4)

1. THE STATES

<i>Name</i>	<i>Territories</i>
1. Andhra Pradesh.	The territories specified in sub-section (1) of section 3 of the Andhra State Act, 1953 and the territories specified in sub-section (1) of section 3 of the States Reorganisation Act, 1956.
2. Assam.	The territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas, but excluding the territories specified in the Schedule to the Assam (Alteration of Boundaries) Act, 1951.

<i>Name</i>	<i>Territories</i>
3. Bihar	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Bihar or were being administered as if they formed part of that Province, but excluding the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956.
4. Bombay	The territories specified in sub-section (1) of section 8 of the States Reorganisation Act, 1956.
5. Kerala	The territories specified in sub-section (1) of section 5 of the States Reorganisation Act, 1956.
6. Madhya Pradesh	The territories specified in sub-section (1) of section 9 of the States Reorganisation Act, 1956.
7. Madras	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Madras or were being administered as if they formed part of that Province and the territories specified in section 4 of the States Reorganisation Act, 1956, but excluding the territories specified in sub-section (1) of section 3 and sub-section (1) of section 4 of the Andhra State Act, 1953 and the territories specified in clause (b) of sub-section (1) of section 5, section 6 and clause (d) of sub-section (1) of section 7 of the States Reorganisation Act, 1956.
8. Mysore	The territories specified in sub-section (1) of section 7 of the States Reorganisation Act, 1956.
9. Orissa	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Orissa or were being administered as if they formed part of that Province.
10. Punjab	The territories specified in section 11 of the States Reorganisation Act, 1956.
11. Rajasthan	The territories specified in section 10 of the States Reorganisation Act, 1956.

<i>Name</i>	<i>Territories</i>
12. Uttar Pradesh	The territories which immediately before the commencement of this Constitution were either comprised in the Province known as the United Provinces or were being administered as if they formed part of that Province.
13. West Bengal	The territories which immediately before the commencement of this Constitution were either comprised in the Province of West Bengal or were being administered as if they formed part of that Province and the territory of Chandernagore as defined in clause (c) of section 2 of the Chandernagore (Merger) Act, 1954, and also the territories specified in sub-section (1) of section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956.
14. Jammu and Kashmir	The territory which immediately before the commencement of this Constitution was comprised in the Indian State of Jammu and Kashmir.

II. THE UNION TERRITORIES

<i>Name</i>	<i>Extent</i>
1. Delhi	The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioners' Province of Delhi.
2. Himachal Pradesh	The territories which immediately before the commencement of this Constitution were being administered as if they were Chief Commissioners' Provinces under the names of Himachal Pradesh and Bilaspur.
3. Manipur	The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioners' Province under the name of Manipur.
4. Tripura	The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioners' Province under the name of Tripura.

<i>Name</i>	<i>Extent</i>
5. The Andaman and Nicobar Islands	The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioners' Province of the Andaman and Nicobar Islands.
6. The Laccadive, Minicoy and Amin-divi Islands	The territory specified in section 6 of the States Reorganisation Act, 1956."

3. Amendment of article 80 and Fourth Schedule.—(1) In article 80 of the Constitution :—

(a) in sub-clause (b) of clause (1), after the word "States", the words "and of the Union territories" shall be added ;

(b) in clause (2), after the words "of the States", the words "and of the Union territories" shall be inserted ;

(c) in clause (4), the words and letters "specified in Part A or Part B of the First Schedule", shall be omitted ;

(d) in clause (5), for the words and letter "States specified in Part C of the First Schedule", the words "Union territories" shall be substituted.

(2) For the Fourth Schedule to the Constitution as amended by the States Reorganisation Act, 1956, and the Bihar and West Bengal (Transfer of Territories) Act, 1956, the following Schedule shall be substituted, namely :—

"FOURTH SCHEDULE

[(Articles 4 (1) and 80 (2))]

ALLOCATION OF SEATS IN THE COUNCIL OF STATES

To each State or Union territory specified in the first column of the following table, there shall be allotted the number of seats specified in the second column thereof opposite to that State or that Union territory, as the case may be.

TABLE

1. Andhra Pradesh	...	...	18
2. Assam	...	...	7
3. Bihar	...	...	22
4. Bombay	...	...	27
5. Kerala	...	...	9
6. Madhya Pradesh	...	...	16
7. Madras	...	...	17
8. Mysore	...	...	12
9. Orissa	...	...	10
10. Punjab	...	...	11
11. Rajasthan	...	...	10

12.	Uttar Pradesh	...	...	34
13.	West Bengal	...	...	16
14.	Jammu and Kashmir	...	...	4
15.	Delhi	...	...	3
16.	Himachal Pradesh	...	...	2
17.	Manipur	...	...	1
18.	Tripura	...	...	1
Total				220"

4. Substitution of new articles for articles 81 and 82.—For articles 81 and 82 of the Constitution, the following articles shall be substituted namely :—

"81. Composition of the House of the People.—(1) Subject to the provisions of article 331, the House of the People shall consist of—

(a) not more than five hundred members chosen by direct election from territorial constituencies in the States, and

(b) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of clause (1),—

(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States ; and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is so far as practicable, the same throughout the State.

(3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

82. Readjustment after each census.—Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine :

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House."

5. Amendment of Article 131.—In article 131 of the Constitution, for the proviso, the following proviso, shall be substituted, namely :—

"Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."

6. Amendment of Article 153.—To article 153 of the Constitution, the following proviso shall be added namely :—

"Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States."

7. Amendment of article 158.—In article 158 of the Constitution, after clause (3), the following clause shall be inserted namely :—

"(3A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine."

8. Amendment of article 168.—(1) In clause (1) of article 168 of the Constitution, in sub-clause (a), after the word "Madras" the word "Mysore" shall be inserted.

(2) In the said sub-clause, as from such date as the President may, by public notification, appoint, after the word "Bombay", the words "Madhya Pradesh" shall be inserted.

9. Substitution of new article for article 170.—For article 170 of the Constitution, the following article shall be substituted namely :—

"170. *Composition of the Legislative Assemblies.*—(1) Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty members chosen by direct election from territorial constituencies in the State.

(2) For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable be the same throughout the State.

Explanation.—In this clause the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine :

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly."

10. Amendment of article 171.—In clause (1) of article 171 of the Constitution, for the word "one-fourth", the word "one-third" shall be substituted.

11. Amendment of article 216.—In article 216 of the Constitution, the proviso shall be omitted.

12. Amendment of article 217.—In article 217 of the Constitution, in clause (1), for the words "shall hold office until he attains the age of sixty years", the following words and figures shall be substituted, namely :—

"shall hold office, in the case of an additional or acting Judge as provided in article 224, and in any other case, until he attains the age of sixty years."

13. For article 220 of the Constitution, the following article shall be substituted, namely :—

"220. *Restriction on practice after being a permanent Judge.*—No person who, after the commencement of this Constitution has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts.

Explanation.—In this article, the expression "High Court" does not include a High Court for a State specified in Part B of the Constitution (Seventh Amendment) Act, 1956".

14. In article 222 of the Constitution,—

(a) in clause (1), the words "within the territory of India" shall be omitted ; and

(b) clause (2) shall be omitted.

15. For article 224 of the Constitution, the following article shall be substituted, namely :—

"224. *Appointment of additional and acting Judges.*—(1) If by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.

(2) When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person

to act as a Judge of that Court until the permanent Judge has resumed his duties.

(3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty years."

16. For articles 230, 231 and 232 of the Constitution, the following articles shall be substituted, namely :—

"230. *Extension of Jurisdiction of High Courts to Union Territories.*— (1) Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory.

(2) Where the High Court of a State exercises jurisdiction in relation to a Union territory,—

(a) nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction ; and

(b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts in that territory, be construed as a reference to the President.

231. *Establishment of a common High Court for two or more States.*— (1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

(2) In relation to any such High Court,—

(a) the reference in article 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction ;

(b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts, be construed as a reference to the Governor of the State in which the subordinate courts are situate ; and

(c) the references in articles 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat :

Provided that if such principal seat is in a Union territory, the references in articles 219 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India."

17. Amendment of Part VIII.—In Part VIII of the Constitution,—

(a) for the heading "THE STATES IN PART C OF THE FIRST SCHEDULE", the heading "THE UNION TERRITORIES" shall be substituted ; and

(b) for articles 239 and 240, the following articles shall be substituted, namely :—

“239. Administration of Union Territories.— (1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

240. Power of President to make regulations for certain Union Territories.—(1) The President may make regulations for the peace, progress and good government of the Union territory of—

(a) the Andaman and Nicobar Islands ;

(b) the Laccadive, Minicoy and Amindivi Islands.

(2) Any regulation so made may repeal or amend any Act made by Parliament or any existing law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applied to that territory.”.

18. Insertion of new article 258A.—After article 258 of the Constitution, the following article shall be inserted, namely :—

“258A. Power of the States to entrust functions to the Union.— Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India entrust either conditionally or unconditionally to that Government or to its officers, functions in relation to any matter to which the executive power of the State extends.”

19. Insertion of new article 290A.—After article 290 of the Constitution, the following article shall be inserted, namely :—

*“290A. Annual payment to certain Devaswom Funds.—*A sum of forty-six lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Kerala, every year to the Travancore Devaswom Fund ; and a sum of thirteen lacks and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Madras every year, to the Devaswom Fund established in that State for the maintenance of Hindu temples and shrines in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin.”

20. Substitution of new article for Article 298.—For article 298 of the Constitution, the following article shall be substituted, namely :—

"298. Power to carry on trade etc.—The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose :

Provided that—

(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State ; and

(b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament."

21. Insertion of new articles 350A and 350B.—After article 350 of the Constitution, the following articles shall be inserted, namely :—

"350A. Facilities for instruction in mother-tongue at primary stage.—It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups ; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

350B. Special Officer for linguistic minorities—(1) There shall be a Special Officer for linguistic minorities to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned."

22. Substitution of new article for article 371.—For article 371 of the Constitution, the following article shall be substituted, namely :—

"371. Special provision with respect to the States of Andhra Pradesh, Punjab and Bombay.—(1) Notwithstanding any thing in this Constitution, the President may, by order made with respect to the State of Andhra Pradesh or Punjab, provide for the constitution and functions of regional committees of the Legislative Assembly of the State, for the modifications to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of the regional committees.

(2) Notwithstanding anything in this Constitution, the President may by order made with respect to the State of Bombay, provide for any special responsibility of the Governor for—

(a) the establishment of separate development boards for Vidarbha, Marathwada, the rest of Maharashtra, Saurashtra, Kutch and the rest of Gujarat with the provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly ;

(b) the equitable allocation of funds for development expenditure over the said areas, subject to the requirements of the State as a whole ; and

(c) an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in services under the control of the State Government, in respect of all the said areas, subject to the requirements of the State as a whole."

23. Insertion of new article 372A.—After article 372 of the Constitution, the following article shall be inserted, namely :—

"372A. *Power of the President to adopt laws.*—(1) For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of this Constitution as amended by that Act, the President may by order made before the 1st day of November, 1957, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(2) Nothing in clause (1) shall be deemed to prevent a competent legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause."

24. Insertion of new article 378A.—After article 378 of the Constitution, the following article shall be inserted, namely :—

"378A. *Special provision as to duration of Andhra Pradesh Legislative Assembly.*—Notwithstanding anything contained in article 172, the Legislative Assembly of the State of Andhra Pradesh as constituted under the provisions of sections 28 and 29 of the States Reorganisation Act, 1956, shall, unless sooner dissolved, continue for a period of five years from the date referred to in the said section 29 and no longer and the expiration of the said period shall operate as a dissolution of that Legislative Assembly."

25. Amendment of Second Schedule.—In the Second Schedule to the Constitution,—

(a) in the heading of Part D, the words and letter “in States in Part A of the First Schedule” shall be omitted ;

(b) in sub-paragraph (1) of paragraph 9, for the words “shall be reduced by the amount of that pension,” the following shall be substituted, namely :—

“shall be reduced—

(a) by the amount of that pension, and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity” ; and

(c)

in paragraph 10—

“(1) for sub-paragraph (1) the following sub-paragraph shall be substituted, namely :—

(1) There shall be paid to the Judges of High Courts, in respect of time spent on actual service, salary at the following rates per mensem, that is to say,—

The Chief Justice	.....	4,000 rupees
Any other Judge	.....	3,500 rupees :

Provided that if a Judge of a High Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the High Court shall be reduced.—

(a) by the amount of that pension, and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and

(c) If he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity” ; and

(ii) for sub-paragraphs (3) and (4), the following sub-paragraph shall be substituted, namely :—

“(3) Any person who, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, was holding office as the Chief Justice of the High Court of a State specified in Part B of the First Schedule and has on such commencement become the Chief Justice of the High Court of a State specified in the said Schedule as amended by the said Act, shall, if he was immediately before such commencement drawing any amount as allowance in addition to his salary, be entitled to receive in respect of time spent on actual service as such Chief Justice, the same amount as allowance in addition to the salary specified in subparagraph (1) of this paragraph.”

26. Modification of entries in the Lists relating to acquisition and requisitioning of property.—In the Seventh Schedule to the Constitution, entry 33 of the Union List and entry 36 of the State List shall be omitted and for entry 42 of the Concurrent List, the following entry shall be substituted, namely :—

“42. Acquisition and requisitioning of property.”

27. Amendment of certain provisions relating to ancient and historical monuments, etc.—In each of the following provisions of the Constitution, namely :—

- (i) entry 67 of the Union List,
- (ii) entry 12 of the State List,
- (iii) entry 40 of the Concurrent List, and
- (iv) article 49,

for the words “declared by Parliament by Law”, the words “declared by or under law made by Parliament” shall be substituted.

28. Amendment of entry 24 of State List.—In the Seventh Schedule to the Constitution, in entry 24 of the State List, for the word and figures “entry 52”, the words and figures “entries 7 and 52” shall be substituted.

29. Consequential and Minor Amendments and repeals and Savings.—(1) The consequential and minor amendments and repeals directed in the Schedule shall be made in the Constitution and in the Constitution (Removal of Difficulties) Order, No. VIII, made under article 392 of the Constitution.

(2) Notwithstanding the repeal of article 243 of the Constitution by the said Schedule, all regulations made by the President under that article and in force immediately before the commencement of this Act shall continue in force until altered or repealed or amended by a competent Legislature or other competent authority.

APPENDIX II

ZONAL COUNCILS

"There shall be a Zonal Council for each of the following five zones, namely :—(a) the Northern zone, comprising the States of Punjab, Rajasthan and Jammu and Kashmir and the Union territories of Delhi and Himachal Pradesh ; (b) the Central Zone, comprising the States of Uttar Pradesh and Madhya Pradesh ; (c) the Eastern Zone, comprising the States of Bihar, West Bengal, Orissa and Assam, and the Union territories of Manipur and Tripura ; (d) the Western Zone, comprising the States of Maharashtra and Gujarat and the Union territories of Bombay ; and (e) the Southern Zone, comprising the States of Andhra-Telangana, Madras, Mysore and Kerala.

6. The Zonal Council for each zone shall consist of the following members, namely :—(a) a Union Minister to be nominated by the President ; (b) the Chief Minister of each of the States included in the zone and two other Ministers of each such State to be nominated by the Governor ; (c) where any Union territory is included in the zone, one member from each such territory to be nominated by the President ; (d) in the case of the Eastern Zone, the person for the time being holding the office of the Adviser to the Governor of Assam for Tribal Areas.

(2) The Union Minister nominated under clause (a) of subsection (1) to a Zonal Council shall be its Chairman.

(3) The Chief Ministers of the States included in each zone shall act as Vice-Chairmen of the Zonal Council for that zone by rotation, each holding office for a period of one year at a time.

(4) The Zonal Council for each zone shall have the following persons as Advisers to assist the Council in the performance of its duties, namely :—

(a) one person nominated by the Planning Commission ;
(b) the persons for the time being holding the offices of Chief Secretaries in the States included in the zone ; and (c) the persons for the time being holding the offices of Development Commissioners in the States included in the zone.

(5) Every Adviser to a Zonal Council shall have the right to take part in the discussions of the Council or of any Committee thereof of which he may be named a member but shall not have a right to vote at a meeting of the Council or of any such Committee.

7. (1) Each Zonal Council shall meet at such time as the Chairman of the Council may appoint in this behalf and shall, subject to the other provisions of this section, observe such rules of procedure in regard to transaction of business at its meeting as it may, with the approval of the Central Government, lay down from time to time.

(2) The Zonal Council for each zone shall, unless otherwise determined by it, meet in the States included in that zone by rotation.

(3) The Chairman or in his absence the Vice-Chairman or in the absence of both the Chairman and the Vice-Chairman, any other Member chosen by the members present from amongst themselves shall preside at a meeting of the Council.

(4) All questions at a meeting of a Zonal Council shall be decided by a majority of votes of the Members present and in the case of an equality of votes the Chairman or, in his absence any other person presiding shall have a second or casting vote.

(5) The proceedings of every meeting of a Zonal Council shall be forwarded to the Central Government and also to each State Government concerned.

8. (1) A Zonal Council may from time to time by resolution passed at a meeting appoint Committees of its members and Advisers for performing such functions as may be specified in the resolution and may associate with any such Committee, such Ministers either for the Union or for the States and such officers serving either in connection with the affairs of the Union or of the States as may be nominated in that behalf by the Council.

(2) A person associated with a Committee of a Zonal Council under sub-section (1) shall have the right to take part in the discussions of the Committee, but shall not have a right to vote at a meeting thereof.

(3) A Committee appointed under sub-section (1) shall observe such rules of procedure in regard to transaction of business at its meetings as the Zonal Council may, with the approval of the Central Government, lay down from time to time.

9. (1) Each Zonal Council shall have a secretarial staff consisting of a Secretary, a Joint Secretary and such other officers as the Chairman may consider necessary to appoint.

(2) The Chief Secretaries of the States represented in such Council shall each be the Secretary of the Council by rotation and hold office for a period of one year at a time.

(3) The Joint Secretary of the Council shall be chosen from amongst officers not in the service of any of the States represented in the Council and shall be appointed by the Chairman.

10. (1) The office of the Zonal Council for each zone shall be located at such place within the zone as may be determined by the Council.

(2) The administrative expenses of the said office, including the salaries and allowances payable to or in respect of members of the secretarial staff of the Council other than the Secretary, shall be borne by the Central Government out of monies provided by Parliament for the purpose.

11. (1) Each Zonal Council shall be an advisory body and may discuss any matter in which some or all of the States represented in that Council, or the Union and one or more of the States represented in that Council, have a common interest and advise the Central Government and the Government of each State concerned as to the action to be taken on any matter.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), a Zonal Council may discuss, and make recommendations with regard to, (a) any matter connected with, or arising out of, the reorganisation of the States under this Act, such as border disputes, linguistic minorities and inter-State transport; (b) any matter concerning economic planning; and (c) all matters of common interest and benefit to the people in the field of social planning."

SELECT BIBLIOGRAPHY

Adhikari, G. :	Pakistan and National Unity.
Aggarwal, S.N. :	Gandhian Constitution of Free India.
Aggarwal and Aiyar :	The Constitution of India.
Ahmed, J. :	The Indian Constitutional Tangle.
Aiyer, Sir P.S.S. :	Indian Constitutional Problems.
Ambedkar, B.R. :	Thoughts on Pakistan (Kegan Paul).
Anand, C.L. :	The Government of India.
Ashraf, K.M. (Ed.) :	Pakistan.
Asoka Mehta and Patwardhan :	The Communal Triangle.
Benerjee, A.C. :	Indian Constitutional Documents—3 Vols.
„ „ :	The making of the Indian Constitution.
„ „ :	The Constitution of the Indian Republic.
Bannerjee, D.N. :	Some Aspects of the New Constitution.
Banerjea, Sir S.N. :	A Nation in Making.
Basu, Major B.D. :	Rise of the Christian Power in India (Modern Review, Calcutta).
Basu, Durga Das :	A Commentary on the Constitution of India.
Beverley, Nicholas :	Verdict on India.
Besant, Annie :	India—A Nation.
„ „ :	How India Wrought for Freedom.
Bose, Subhas Chandra :	The Indian Struggle.
Chanda, Asok :	Indian Administration.
Chatterjee, A.C. :	India's Struggle for Freedom.
Chintamani, C.V. :	Indian Politics Since the Mutiny.
Chintamani and Masani :	Indian Constitution at Work.
Chirol, V. :	Indian Unrest.
„ „ :	India.

- Coupland, R. : The Indian Problem 1833-1935.
 " " : Indian Politics 1936-42.
 " " : The Future of India.
 " " : India, A Restatement.
 " " : The Cripps Mission (Oxford University Press).
- Cowell, Herbert : History and Constitution of the Courts and Legislative Authorities in India—6th Ed. (1936).
- Curtis-Lionel : Dyarchy.
- Dhawan, G.N. : The Political Philosophy of Mahatma Gandhi.
- Dodwell : Cambridge History of India—Vol. VI.
- Fischer, Louis : The Life of Mahatma Gandhi.
- Gandhi, M.K. : My Experiments with Truth.
- Gokhale, G.K. : Speeches, 3rd Ed. (Natesan & Co. Madras, 1920.)
- Government of India Act of 1919.
- Government of India Act of 1935.
- Government of India Act of 1947.
- Humayun Kabir : Muslim Politics 1906-1942.
- Hamza, El. : Pakistan a Nation.
- Ilbert, C.P. : The Government of India (Oxford University Press).
- Indian States Committee : Report of the Butler Committee, (1929).
- Iqbal, Sir Mohd. : Letters to Jinnah.
- Joshi, G. N. : The New Constitution of India (1935 Act).
- Kale, V.G. : Indian Administration (Arya Bhushan Press).
- Kaye, Sir John : Administration of East India Company.
- Keith, A.B. : Constitutional History of India.
- Kerala Putra : Working of Dyarchy in India (1919-1928).
- Lajpat Rai : Young India.
- Lovett, Verney (Sir) : A History of the Indian Nationalist Movement.
- MacDonald : The Awakening of India.

Mazumdar, A.C. :	Indian National Evolution.
Majumdar, B. :	Political Thought From Ram Mohan Roy to Dayanand.
Mehta Asoka :	1857—The Great Rebellion.
Montagu, Edwin S. :	Indian Diary : Ed. by Venitia Montagu, London, 1930.
Morris-Jones, W. F. :	Parliament in India.
Morley :	Recollections.
Mukerji, P. :	Indian Constitutional Documents.
Narain, Jai Prakash :	Towards Struggle.
Nehru, Jawaharlal :	Autobiography.
„ „ :	Discovery of India.
„ „ :	Independence and After (Speeches).
Noaman, M. :	Muslim India.
Prasad, Basheshar :	Origins of Provincial Autonomy. Allahabad, 1941.
Pal, B.C. :	The Soul of India.
Palande, M. R. :	Indian Administration.
Panikkar :	Relation of Indian States.
Pradhan, R.G. :	India's Struggle for Swaraj. Madras, 1930.
Punniah, K.V. :	Constitutional History of India.
Pardasani, N.S. :	How India is Governed ?
Prasad, Beni :	India's Hindu Muslim Problem.
Prasad, Rajendra :	India Divided.
„ „ :	Pakistan.
Report :	Indian Constitutional Reforms (1918).
Report :	Indian Statutory Commission (Simon Commission).
Raghuvanshi, V.P.S. :	Indian Nationalist Movement and Thought.
Ramaswami, M. :	The Constitution of Indian Republic.
Rudra, A. B. :	The Viceroy and Governor-General of India. (Oxford University Press).
Rushbrook, Williams, L.F. :	What about India ? London, 1938.
Sapre, B.G. :	The Growth of the Indian Constitution and Administration.

- Shah, K. T. : Provincial Autonomy.
" " : Federal Structure.
Singh, G.N. : Indian States and British India.
" " : Land Marks in Indian Constitutional and National Development.
Sharma, Sri Ram : Constitutional History of India.
Shafaat Ahmad Khan : The Indian Federation.
Sitaramayya, B.P. : History of the Indian National Congress—Vols. I and II.
Shukla, V.N. : The Constitution of India.
Santhanam, K. : The Constitution of India.
Topa, I.N. : The Growth and Development of Nationalist Thought in India.
Thakore, B.K. : Indian Administration to the Dawn of Responsible Government (1765-1920).
Venkataraman, T. S. : A Treatise on Secular State.
Zacharias, H.C.E. : Renascent India.

The Indian

Independent Act

1857

pracher
World War II

INDEX

A

Act, The Amending Act of 1781, 15
—Pitts India Act of 1784, 15-7
—The Regulating Act of 1773, 11-5
Act of 1793, 17
Act of 1813, 17-8
Act of 1833, 18-20
Act of 1853, 20-2
Act of 1858, 24-6 ; evaluation, 27-8
—Indian Councils Act of 1861, 29-32
—Indian Councils Act of 1892, 46-8
—Indian Councils Act of 1909, 64-8
—Government of India Act of 1919, Chapter XI-XIV 84-127, Main Features 85-7
—Government of India Act of 1935, Chapter XIX-XXIII, Main Features, 173-5
—Indian Independence Act of 1947, 269-70
Administrative Services, 413-26
Advisers to S. O. S., 180-1
Advocate-General, 370
Appeals, 430-1
Arms Act, 36
Arya Samaj, 464
Assembly, House of—, 190 ; Legislative—, 100 ; State Legislative—, 356-7
Association, Policy of—, 29-32
Assurance Controversy, 215-6
Attlee's Statement, 245
Attorney-General, 370

August, 1940 Offer, 226-7
Autonomy, Provincial, 214-22
Azad, Maulana, 242

B

Banerjea Surindra Nath, 37, 469-70
Battle,—of Plassey, 9 ;—of Buxer, 9
Bentinck, Lord, 429
Besant, Mrs. Annie, 476-7
Bipin Ghandra Pal, 53
Board of Control, 15-7
Boycott and Swadeshi Movement, 52-3
Brahmo Samaj, 462-3

C

Cabinet, see Council of Ministers
Cabinet Mission Plan, 245-54
Charters, Royal, 7
Citizenship, 365-6
Civil Disobedience Movement, 159-61, 166-7 ;
Method of non-violence—, 5-6, Individual—, 227-8
Civil Services, 413-426
Coalition Ministries, 216
Communal Electorates, 61-2
Communal Problem, Chapters, VIII & XXVIII
Communal Award, 167-70
Communalism, growth of Muslim 53-63, 255-64
Communist Party, 455-6
Concurrent List, 288-9
Congress, Indian National Congress early phase, 33-45 ; programme of—, 451-3, See Non-

co-operation, Civil Disobedience and Quit India
 Constitution, New, Features of—
 276-81 ; Comparison with Act
 of 1935, 281-3 ; Appraisal of
 the—, 372-5
 Constituent Assembly, 273-6
 Constitutional Remedies, 303
 Cornwallis, Lord, 4, 428-9
 Council of Ministers, under 1935
 Act, 205-6 ; under new Consti-
 tution, 324-9
 Council of State, 103-5, 105-6
 Council of States, 331-2
 Coupland, Prof. 125-7, 222
 Crewe, Lord, 70-1
 C.R. Formula, 239-40
 Cripps Mission, 230-3
 Curzon, Lord, 51

D

Dadabhai Naoroji, 467-9
 Dalhousie, Lord, 22, 23
 Dandi March, 159-60
 Dayanand Saraswati, Swami,
 463-4
 Declaration,—of 1917, 78-80 ;
 Causes of—, 78
 Decentralisation Commission,
 439-40
 Derby, Lord, 27
 Direct Action, 253-4
 Directive Principles, 306-10
 Discretionary Powers, 350-2
 Divide and Rule Policy, 3-4, 61
 Dominion Status vs Indepen-
 dence, 154-8
 Double Government in Bengal,
 9-10 ; evils of—, 10-11
 Dufferin, Lord, 40, 42, 47
 Dyarchy, seed of—, 80-1 ; nature
 and working of—, 120-7

E

Electorate, Separate—, 61-3
 Election Commission, 370-1
 Elections, General—, 444-50

Emergency Powers, 315-319
 Executive Council, 97-100, 228-9
 Extremist Movement, causes
 of growth, 49-53 ; Birth of
 Extremist Party, 53-4 ; princi-
 ples, 57-8 ; effect on national
 struggle, 58 ; Different Groups,
 53-7

F

Federation,—under 1935 Act,
 175-8 ;—present, 291-5
 Federal Court, 195-7
 Federal Legislature, 190-5
 Financial Devolution, 400-12
 Fourteen Points of Jinnah, 257-8
 Fundamental Rights, 296-306

G

Gandhi, Mahatma 128, 139-40,
 148, 237-8, 480-8
 Gandhi-Irwin Pact, 163-4
 Gokhale, Gopal Krishna, 470-2
 Governor, Provincial,—Under
 1919 Act, 110-33 ;—Under
 1935 Act, 200-5
 Governor of State, 348-52
 Governor-General.—Under 1919
 Act, 94-7 ;—Under 1935 Act
 185-8
 Grouping Controversy, 249-50

H

Hardinge, Lord, 69
 Hastings, Warren, 428
 High Commissioner for India,
 92-93, 181
 High Courts in States, 362-4,
 429-30
 Hindu Maha Sabha, 458-9
 Home Government, 87-93, 180-4
 Home Rule Movement, 75-7
 House of Assembly, 194
 House of the People, 332-5
 Comparative powers with Coun-
 cil of States 335-7

Hume, A. O., 464-6
 Hunter Committee, 132-3
 Ilbert Bill, 38-9

I

Independence, Complete, 154-8 ; Causes, 271-2
 India Council, 26-7, 90-2, 180-2
 Indian Independence Act, 269-70
 Indian National Army Trial, 243
 Indian National Congress, see under Congress
 Indian States, Paramountcy, 385-9 ; Under Act of 1935, 389-91
 Integration, accession and democratization of —, 392-399
 Interim Government, 253-4
 Interim Ministries, 215
 Instrument of Instructions, 112-3, 188
 Italo-Abyssinian War, 53

J

Jallianwala Bagh, 130-3
 Jinnah, 225, 252-72
 Judicial Administration, Growth of —, 427-30 ; Some Aspects of —, 430-5

K

Khilafat Movement, 133-4

L

Lajpat Rai, Lala, 475-6
 Language, official —, 366-8
 Lee Commission, 416-7
 Lytton, Lord, 36
 Legislative Assembly, Central —, 100-3, 105-6 ; Influence of —, 106
 Legislative Council, 257-8
 Legislative Provincial —, 115-9, 206-13, — of States, 355-8

Legislative Lists, 174-5, 288-9
 Liberals in Councils, 141
 Liberal Federation, 82
 Linlithgow, Lord, 224
 Local Self-Government, 436-43

M

Malviya, Madan, 477-9
 Mayo, Lord, 437
 Macaulay, Lord, 19, 21, 35
 Mesopotamian Muddle, 77-8
 Mill, J. S., 24
 Minto, Lord, 62-3
 Moderates, 43-5
 Montagu, E.S., 1917 Pronouncement of —, 78
 Montagu-Chelmsford, Report, 80-3
 Mountbatten Plan, 266-9
 Montagu-Chelmsford Scheme, 80-3
 Morley-Minto Reforms, 64-9
 Muddiman Committee Report, 145, 434
 Muslim Communalism, Chapters VIII & XXVIII
 Muslim League, See Chapters VIII & XXVIII
 Mutiny, Consequences, 23-4

N

Naoroji, Dadabhai, 467-9
 National Government, 253-4
 National Movement, 1885-1905, 33-45, see Congress
 Nehru, Jawahar Lal, 6
 Nehru, Motilal, 479-80
 Nehru Report, 152-4
 New Constitution, Special features, 276-84
 Non-Cooperation Movement, 128-41

O

Objectives Resolution, 275
 Office Acceptance, 215

P

Pakistan, 259-64, 267-9
 Palmerston, Lord, 24
 Parliament, Control of British—,
 182-4 ;—of India, 330-9
 Parliamentary Government,—in
 India, 376-81
 Partition of Bengal, 52-3, 70
 Partition of India, 265-70
 Patel, Sardar Vallabhbhai, 406
 Peel Commission, 23
 Political Parties, 451-61 ; Fea-
 tures, 460-1
 Poona Pact, 170
 Praja Socialist Party, 454-5
 Preamble to the Act of 1919, 84-
 5 ;—to the New Constitution,
 276
 President, 311-22 ; Election of
 —, 311-2 ; powers of—, 313-
 9 ; role of —, 319-22
 Preventive Detention, 300
 Prime-Minister, 324-9
 Provincial Autonomy, 173-4 ;
 working of—, 214-22
 Public Services, 413-26

Q

Quit India Movement, 234-8

R

Rashtriya S.S., 458
 Reserved Subjects, 108
 Revolutionaries, 56-7
 Ripon, Lord, 401-2, 439-40
 Round Table Conferences, 161-3,
 164-5, 170-1
 Rowlatt Bills, 129-30
 Roy, Raja Ram Mohan, 462-3
 Russo-Japanese War, 53

S

Safeguards, 174, 178-80
 Second Chamber,—in Provinces,
 206-7 ;—in States, 359-60
 Secretary of State for India, 87-9 ;
 —Control over Government of
 India, 89-90

Secular State, 278
 Services, Public—, 413-23 ; Criti-
 cism, 423-6
 Simla Conference, 241
 Simon Commission Report, 149-
 52
 Skeen Commission, 146
 Socialist Party, 453-4
 Speaker, 334-5
 Special Responsibilities of
 Governor-General, 188 ; of
 Governor, 204
 States Reorganisation, 285-7
 State List, 288
 Supreme Court, 242-9
 Surat Split, 54-5
 Swaraj Party, 142-8
 Swatantra Party 456-8
 Syed Ahmad Khan, Sir, 60

T

Terrorists, 56
 Theosophical Society, 34
 Tilak, Bal Gangadhar, 472-4
 —and Gokhale compared, 474-5
 Transferred Subjects, 108
 Tandon, Purshottam Das, 269
 Two-Nation Theory, 260-2

U

Union List, 288
 Units of Indian Union, 285-6 ;
 Change in Units, 286-7
 Untouchability, 297

V

Vernacular Press Act, 38
 Vice-President, 323
 Victoria's, Queen, Proclamation
 of 1858, 28

W

Wavell, Plan, 240-3
 Wahabi Movement, 59-60
 Wedderburn, Sir William, 466-7
 Whiteman's burnden Theory, 2-3
 World War I, 71
 World War II, 223-4
 Writs, 303-4